

# Impacts of CAL's Distributions

## Report



Copyright Agency Limited

157 Liverpool St  
Sydney 2000

Ph: +612 9394 7600

Prepared by

**amr**interactive 

Level1, 202 -206 Broadway  
Ultimo NSW 2007

Ph: +612 9211 1050  
Fax: +612 92114080  
[www.amrinteractive.com](http://www.amrinteractive.com)

October 2002

---

## Table of Contents

<b>1</b>	<b>INTRODUCTION.....</b>	<b>4</b>
<b>2</b>	<b>BACKGROUND.....</b>	<b>5</b>
<b>3</b>	<b>EXECUTIVE SUMMARY.....</b>	<b>6</b>
<b>4</b>	<b>RESEARCH OBJECTIVES .....</b>	<b>10</b>
<b>5</b>	<b>RESEARCH METHODOLOGY.....</b>	<b>11</b>
<b>6</b>	<b>IMPACTS OF COPYING ON PUBLISHERS .....</b>	<b>12</b>
6.1	GENERAL IMPACTS OF PHOTOCOPYING.....	12
6.1.1	<i>Overview.....</i>	<i>12</i>
6.2	SPECIFIC IMPACTS OF PHOTOCOPYING.....	12
6.2.1	<i>Issues for Educational Publishers.....</i>	<i>13</i>
6.2.2	<i>Effects on Content.....</i>	<i>15</i>
6.3	IMPACTS OF PHOTOCOPYING OVER TIME .....	16
6.4	SUMMARY - KEY AREAS OF IMPACT .....	18
<b>7</b>	<b>DIGITAL COPYING.....</b>	<b>19</b>
7.1	OVERVIEW .....	19
7.2	DIGITAL PROTECTION CONCERNS.....	19
7.2.1	<i>Issues for Educational Publishers.....</i>	<i>20</i>
7.2.2	<i>Issues for Trade &amp; Professional Publishers.....</i>	<i>21</i>
7.3	BUSINESS & REVENUE.....	22
7.4	CAL'S ROLE IN DIGITAL PROTECTION.....	23
7.5	AUSTRALIAN LEGISLATION .....	23
7.6	SUMMARY – KEY AREAS OF IMPACT .....	24
<b>8</b>	<b>CAL DISTRIBUTION IMPACTS .....</b>	<b>25</b>
8.1	SIGNIFICANCE OF REVENUE .....	25
8.2	AWARENESS OF REVENUE .....	26
8.3	PERCEPTIONS OF CAL'S DISTRIBUTIONS .....	26
8.3.1	<i>Fairness and Equity for Publishers.....</i>	<i>26</i>
8.3.2	<i>Publishers Perceptions of Equity for Authors.....</i>	<i>28</i>
8.4	CAL REVENUE PROJECTION.....	28
8.5	CAL REVENUE – IMPACTS ON BUSINESS OPERATIONS & PLANNING.....	30
8.6	IMPACT OF CAL DISTRIBUTIONS ON WORKS PUBLISHED .....	30
8.7	SUMMARY – KEY AREAS OF IMPACT .....	31
<b>9</b>	<b>SECONDARY DISTRIBUTION OF CAL PAYMENT.....</b>	<b>32</b>
9.1	METHODS OF SECONDARY DISTRIBUTION .....	32
9.1.1	<i>Identification of CAL Payment.....</i>	<i>32</i>
9.1.2	<i>Minimum Distribution Amounts.....</i>	<i>32</i>
9.1.3	<i>Royalties and Distribution Timeframe.....</i>	<i>32</i>
9.1.4	<i>Administration.....</i>	<i>33</i>
9.2	AUTHORS' REGISTRATION WITH CAL.....	34
9.3	SECONDARY DISTRIBUTION AND THE PUBLISHER-AUTHOR RELATIONSHIP .....	36
9.4	CONTRACTUAL SPLITS – PUBLISHERS' ATTITUDES.....	37
9.5	CAL'S COPYING DATA.....	38
9.5.1	<i>Publishers' Awareness of Copying Data.....</i>	<i>38</i>
9.5.2	<i>Publishers Use of Copying Data.....</i>	<i>38</i>
9.6	SUMMARY – KEY AREAS OF IMPACT .....	39

---

**10 IMPACT OF CAL OVERALL..... 41**

10.1 OVERVIEW .....41

10.2 PERCEIVED IMPACT ON AUTHORS.....42

10.3 FINANCIAL IMPACT .....42

10.4 SUMMARY – KEY AREAS OF IMPACT .....43

**APPENDIX – INTERVIEW GUIDE..... 44**

## 1 Introduction

In early 2002, The Copyright Agency Limited (CAL) commissioned **amr interactive** to undertake a research study which examined the impacts of photocopying on Australian book publishers, their concerns with and preparations for online publishing, and the impacts, equitability and workability of CAL distributions for publishers.

The findings of this study are presented in the following report and represent the comments and attitudes of Australian book publishers on the issues raised. The report does not attempt to place publishers' views into context, nor weigh their merits. The views reported are in no way reflective of CAL's views nor those of **amr interactive**.

A separate set of conclusions and recommendations has been prepared by **amr interactive**, for consideration by the CAL management and Board.

This report is the first in a series planned by CAL, to investigate the views of key stakeholder groups, on a range of current issues. Already in planning is a parallel study of the experiences and views of Australian authors on the impacts of photocopying and digital reproduction on their work and their views on CAL's policies, programs and the distribution process. Once that study has been completed, CAL management and Board will be better placed to assess the issues and recommendations arising and report on the ways in which they intend to address them.

## 2 Background

Copyright Agency Limited (CAL) describes itself as

A copyright management company, which was established in 1974 by authors and publishers to represent their reprographic rights and to receive fair remuneration for the use of their works.

CAL has since been declared by the Commonwealth Attorney General's Department to administer the statutory license for educational institutions and for government copying under the Copyright Act.

To date, CAL has distributed more than \$180 million, of which approximately 80% is paid directly to Australian authors and publishers. While CAL's primary objective is to ensure legitimate returns to copyright owners, there are secondary aims to provide an effective service to members, and to be an advocate of the copyright industry.

CAL wished to examine the direct impact of its activities on publishing in Australia. CAL wanted to conduct a qualitative research study, which examined the impacts of photocopying on Australian book publishers, their concerns with and preparations for online publishing, and the impacts, equitability and workability of CAL distributions for publishers.

### 3 Executive Summary

Copyright Agency Limited (CAL) commissioned **amr interactive** to undertake a research study which examined the impacts of photocopying on Australian book publishers, their concerns with and preparations for online publishing, and the impacts, equitability and workability of CAL distributions for publishers.

A stratified sample of twenty-five publishers was selected. Twenty were taken from amongst CAL's Top 40 distribution recipients in 2001, and five from the distribution groups specified by CAL as "small" or "medium".

#### Approach

Face-to-face in-depth interviews were conducted with senior management and, sometimes additionally, Rights & Contracts and Finance staff from each of the selected publishing houses. With assistance from the Australian Publishers Association, the response rate was 100%.

A structured discussion, lasting around one hour, probed publishers' views on the areas of pressing focus; firstly, the impacts of photo and digital copying on their activities, and secondly, their views on and management of the secondary distribution.

#### Overview

Overall, regardless of their size, specialty, or level of distribution, publishers are outspoken in acknowledging the importance of CAL. Though publishers have their own concerns and complaints relating to specific aspects of CAL, they are able to distinguish these issues from their overall valuing and praise for CAL's continuing importance and relevance in protecting intellectual property, copyright, and copying limits in Australia.

About three quarters of publishers said there would be a significant negative impact, if CAL no longer existed. Well over half express a strong desire for CAL to maintain its present lobbying role.

#### Impacts of Photocopying

It appears that photocopying remains a significant area of impact for Australian publishers in 2002, though some sectors of the industry appear more strongly affected than others, and demonstrate differing levels of concern, accordingly.

More than a third described photocopying as having a significant impact. Large specialist education publishers were the most likely to report significant impacts, and were the most likely to view it as a “*significant*” or “*critical*” problem.

Trade and professional publishers report the least significant impacts of photocopying on their business. Over a third of the publishers described photocopying as having quite a small impact on their business overall.

About half the respondents said photocopying was more of an issue today or as big an issue as ever. Almost all educational publishers felt that photocopying was more of a problematic issue than ever before.

Course notes are a significant issue for publishers in the tertiary education sector. Some publishers are reporting quite direct links between the dramatic increase in course notes over the past five years, and a decrease in their revenue in certain areas.

### **Member Services & Accessibility**

While publishers are almost universal in their overall praise of CAL’s efforts to protect copyright, the difficulties of distribution, the anxieties over legislation and other issues, and concern about reduction in revenues, do affect CAL’s relationship with publishers.

Because of publishers’ specific anxieties relating to copyright protection and distribution entitlements, they often complain of a “*lack of transparency*”. Some publishers expressed concern that CAL’s general approach was too “*highbrow*”. Many publishers thought CAL should look at “*value-adding*”, to member’s services.

### **The Digital Agenda**

About half the publishers interviewed have implemented some provisions for online delivery and/or licensing. Of those publishers who haven’t implemented changes, almost all are looking to implement some provisions in the foreseeable future.

The main fears about moving ahead with online publishing and licensing are:

- 1) Lack of revenue opportunity
- 2) Lack of safeguards: copyright legislation/protection

There are widespread concerns about lack of copyright protection in government legislation, and concerns that Australia is lagging behind international standards of digital copyright protection.

Educational publishers appear to be the group most concerned about the security of digital delivery and the problem of digital copying, especially in the tertiary education sector.

Publishers want CAL to take a strong leadership role and be at the forefront of the digital agenda.

### **Distribution & Administration**

Around a third of interviewees described their CAL revenue as substantial, while another third described CAL revenue as “small but significant”. Three quarters of publishers include CAL distributions in their revenue projection.

The more recent, additional, smaller payments tend to be confusing for publishers. Many publishers said they would rather the monies be held over and grouped into larger amounts.

Many feel the 60-day distribution period is not reasonable, and should be more flexible. Many publishers would prefer to have the option of distributing CAL monies in combination with other royalties, and therefore reduce administrative burden and overheads.

About one third of publishers think CAL distributions are as fair as they can be. Another third have mixed feelings about the fairness of distributions. Sampling issues are raised as the greatest area of concern.

### **Contractual Splits**

Although some concede that standardised splits may assist the administration process of CAL monies, publishers overwhelmingly expressed the opinion that contractual splits should be a matter for the publisher and the author to decide.

In the case of the larger educational and trade companies, administration and distribution of CAL monies has become familiar and streamlined over time.

### **Authors’ Registration with CAL**

Some publishers expressed strong concerns about the current methods of separate author registration with CAL. Trade publishers appeared to be the most concerned about this issue. Where authors understandably have no systematic way of calculating and administering a secondary split, back to publishers or other authors, it appears these monies are often not being passed on correctly.

### **CAL's Role as an Educator**

Whilst publishers point to CAL's vital role in continuing to educate users about copyright and copying limits, they also express a desire for further education amongst publishers themselves about CAL's activities and general copyright issues.

## 4 Research Objectives

CAL commissioned **amr interactive** to examine the perceived and structural effects of copying on Australian book publishers, and the direct impact of CAL's activities on the publishing industry in Australia.

This is the first of a series of studies. The next scheduled study will focus on authors.

### 1. Commercial Impact

Since its inception, CAL has distributed more than \$180 million to publishers and copyright holders. How do publishers perceive the impact of these distributions to their individual businesses and to the Australian publishing industry overall?

Do publishers consider CAL's distributions to be supplementary or core revenue? How do publishers utilise and distribute these monies? What role do these monies play in their business operations and planning? How would publishers' businesses be affected if CAL's distributions were no longer supplied?

### 2. Copying

What effect does the copying and digital reproduction of copyright material have on revenue, structure and business management of publishing? What are publishers' attitudes and business forecasts in relation to copying and digital publishing over the next 5-10 years?

What is the follow-on effect to authors and other copyright holders in the publishing industry?

### 3. Publishing Structure & Content

What impact do CAL's distributions have on the structure and content of the Australian publishing industry? Have CAL's distributions influenced the publication of particular genres?

Do publishers take CAL distributions into account when deciding what types of work to publish?

### 4. CAL's Perceived Role

How do publishers and members perceive CAL's current role in protecting intellectual property and the collection and distribution of monies?

## 5 Research Methodology

A total of twenty-five depth interviews were conducted, face-to-face, with senior management of publishing companies. Twenty interviews were conducted with publishers who fell within CAL's Top 40 distributions for 2001, and five interviews were conducted with companies who fell into CAL's "small" or "medium" distribution amounts over 2001.

This skew was designed to focus on likely major changes which impacted the Australian publishing industry as well as to examine the systems used for secondary distributions.

In most cases, interviews were requested with Managing Directors or Publishing Directors, however some companies chose to nominate an alternate person they felt most appropriate to be interviewed for this study.

### Key interviewees were:

- Managing Directors
- General Managers/ Regional Managers
- Publishing Directors/ Managing Editors/ Publishing Managers

Additional staff from finance, accounts and rights & contracts were sometimes present at the interviews.

### Location:

- 15 interviews were conducted in Sydney, NSW.
- 7 interviews took place in Melbourne, VIC.
- 3 interviews were conducted over the phone to interstate/regional areas.

CAL provided a sample list from publishers who received CAL's Top 40 distributions in 2001, and publishers who received "small" or "medium" distributions over the same period. **amr interactive** selected a sample from each group.

Interviewing took place over the period 20<sup>th</sup> May - 13<sup>th</sup> June 2001.

Most interviews were audio taped, with permission from the participants, and fully transcribed. Transcripts were given an identification code to ensure the anonymity of all records.

Participants were assured of the confidentiality of their comments.

## 6 Impacts of Copying on Publishers

### 6.1 General Impacts of Photocopying

#### 6.1.1 Overview

Publishers were divided in their reactions to the impacts of photocopying. They consider it to be either a very significant issue, or, to the contrary, not significant at all. Just over a third of publishers described photocopying as having a significant impact, whilst another third described it as having quite a small impact. Only five publishers noted the impact as moderate. Some publishers, who describe photocopying as having only a small impact on their business overall, do note specific effects, including revenue reduction, but rate the overall impact as negligible.

Large specialist education publishers are most likely to report significant business impacts of photocopying, and are the most likely to view it as a significant or critical problem.

Trade and professional publishers report the least significant business impacts of photocopying. Publishers, whose material is trade/educational or professional/educational, tend to view photocopying as a less critical problem than specialist education publishers.

The trade publishers, who tended to feel that photocopying had a small impact on their own businesses, often noted, *"but it's more of an issue for educational publishers"*, demonstrating both their awareness and concern about the issue beyond their own business.

### 6.2 Specific Impacts of Photocopying

Photocopying is viewed by a number of publishers as just one part of an overall landscape of factors and change in the Australian publishing industry. About half the publishers said photocopying had not changed the way they publish. Just over a third said photocopying had specific impacts on the way they publish; with the remainder saying they've learned to live with it, (i.e. historically photocopying impacted and continues to impact, but they've addressed the issues with a framework that's been in place for some time now). Again, educational publishers report the biggest impacts.

Ways of publishing seem to have been affected much more than *what* is being published, though there are some significant shifts reported in educational publishing.

Trade publishers tend to say that photocopying does not influence their publishing decisions in any way.

Some publishers have cited more limited runs of some types of material, over time. No one interviewed had closed down any operations or moved any activities offshore due directly to photocopying. Almost nobody has directly linked photocopying with the complete cessation of publication in any one area. The only examples given are very specific, and do not account for a significant percentage of overall revenue.

Some publishers, who are very outspoken about the ills of photocopying overall, say that it doesn't have a huge impact on their company's publishing decisions.

*The percentage may have increased a bit, but not so much that it's meant we can't publish this book whereas otherwise we would.*

*In the end if it was 10% (loss of revenue), 10% is not sufficient to be the difference between us publishing or not publishing. Sometimes photocopying is in the back of our mind that a project might not succeed, but that wouldn't go in the proposal to say that's the reason we didn't get on board.*

Some publishers noted a move away from anthologies or composites, because of the ease of photocopying this type of material, and a reduced need for anthologies due to the increased reliance on course notes.

### **6.2.1 Issues for Educational Publishers**

The majority of educational publishers in the primary, secondary and tertiary sectors report significant impacts of photocopying.

Tertiary education publishers flagged course packs as a "hotspot".

*Course packs are a major erosion of revenue. Course packs do get caught (by CAL sampling), and there's CAL revenue from them, but the growth for most professional educational and scholarly publishers comes from the ability to sell their products in incremental bites. Course packs take those incremental bites and allow someone else to sell them. It takes an entire revenue stream that could be a future component of the company away. That's a significant issue.*

One university press interviewed, also runs the campus bookshop, and is in a position to understand the correlation between the growth of course notes and the loss of revenue first-hand.

*I believe that photocopying has substantially reduced sales of our books in the academic environment. I can see the growth of course notes sales, which have (undergone) a substantial*

*growth rate every year (over the past five years). Whether it directly reflects that sort of loss in our unit sales I'm not sure, but it certainly has a significant effect. Our unit sales have dropped in the same period.*

Publishers in tertiary education complain strongly about the fact that when their work is copied for course packs, its reproduced appearance is quite unprofessional, and they have no control or recourse.

*There's a moral rights issue involved - it dramatically demeans the quality of the material. You take a second or third generation photocopy of our material with a staple in the corner and flog it off as our product. There's been a significant editorial process developed, one that has wonderful photographs, and illustrations, which turn into these murky half tones, which still have our imprint on them. It's fundamentally wrong. It's morally wrong...we should be able to sell it ourselves, and not have someone else with a legal right to demean our product.*

Note that the impacts of course packs on tertiary education publishers are discussed further in section **6.3 Impacts of Photocopying Over Time**.

Some tertiary educational publishers describe a move away from the soft sciences and humanities (eg. politics, social work, social science), especially in the undergraduate area, in favour of professional courses - nursing, medicine, psychology, and engineering.

They have also noted that in educational copying, softer sciences and humanities subjects are more detrimentally affected by photocopying than professional courses, such as engineering and medicine. Professionally based courses are often more likely to follow core texts, than is the case in the humanities and social sciences. In the trades and professions, students are reported as being more likely to purchase textbooks to build their professional libraries.

A number of educational publishers noted that they are upgrading editions more quickly, books having a significantly shorter lifespan than they used to, especially textbooks. The lifespan was previously about 5-7 years. Now it's more likely to be three years. Publishers note that photocopying is definitely a major factor for these decisions, but other factors, such as changing curriculums, certainly come into play. This trend seems to span primary, secondary and tertiary sectors.

One medium-sized primary education publisher, in the Top 40 distribution bracket, estimated that photocopying corresponds to the direct loss of around \$2 million per year in revenue.

Primary education publishers note that maths and science texts are copied to a large extent, and loss of sales can be seen in

these areas. Some note the “disproportionate” nature of copying compared to sales. For example, one publisher sold 1200 units of one science book, and received \$26,000 in CAL payments for the same book.

One smaller primary educational publisher says that the impacts of photocopying have led to them publishing more titles, “flooding the market with a variety of books.”

In primary education, black line masters and teachers resource books are seen to be a minefield. Some publishers say they are producing more of these works today, while others have reduced or stopped their output in this area. Publishers feel photocopying of black line masters often breach copyright. They point to schools buying one copy for the whole school, and photocopying it, rather than buying one for each class or teacher.

### 6.2.2 Effects on Content

More than three quarters of publishers said they were not organising content differently in specific reaction to photocopying.

Very few publishers said they would let photocopying influence content. Their focus for the overall content and design of a work centred around their target audience, their subject, the best and most attractive ways of presenting the material, and marketability.

Some publishers mentioned that they know certain colour printing would make photocopying more difficult, but would not base such a significant printing decision on the issue of photocopying.

*In the end they'll photocopy regardless and put it in their course notes, it'll just look worse.*

However, in the primary and secondary education sectors, some publishers note that an increasing move towards full colour printing may help to combat black & white photocopying, because consumers will become less inclined to accept material that does not look good.

*Whether it's a defence against photocopying or not, we're conscious that the increasing amount of colour we use is likely to be an impediment against photocopying. Kids become used to terrific looking material, so they're not going to be satisfied with black and white. So we probably don't ever really spend money on colour just so it won't be copied, but we are conscious that if we do it in one or two colours it will probably be photocopied more.*

One smaller primary educational publisher agrees that publishing in full colour could work to draw consumers away from

photocopied material and make black & white photocopying more difficult, but says the costs of colour printing are preventatively high for their company to do this often.

### 6.3 Impacts of Photocopying Over Time

About half the respondents said photocopying was more of an issue today or as big an issue as ever. The remaining twelve respondents were evenly split between "learned to live with it", and "not much of an issue ever".

All educational publishers, except one, felt that photocopying was more of a problematic issue than ever before. The university presses viewed it as a continuing issue but generally said they had learned to live with it. Trade publishers and combination trade/professional/educational had mixed views that spanned the full spectrum.

Those who felt photocopying was worse than ever before generally saw this as occurring within a reasonably recent timeframe: the last 2-7 years. Those who did not view the impact of photocopying as increasing, tended to feel photocopying has remained very similar for 10-15 years.

Those publishers who describe photocopying as having a more significant impact than ever, were generally worried about an overall climate of photocopying, especially in relation to:

- Attitudes of teachers
- The ease/encouragement of photocopying at universities
- Print operations at university bookshops becoming semi-professional and a significant threat to revenue

*Technology breeds photocopying*

*I think schools are better set up, have more resources, photocopying is done more semi-professionally within schools.*

One large educational publisher made the comment that photocopying is not very different to five years ago, perhaps somewhat different to ten years ago, but most certainly very different to 20-25 years ago.

*It's more organised, more efficient, universities are more involved. When I was at uni, it (photocopying) was what you did sneakily. These days most students have an attitude of "I'm allowed to".*

*I think it's a cultural thing now with teachers. Basically it's open slather.*

*I think it's become more business-like, that's perhaps what worries me. I think in institutions there's the belief to a certain extent that that's acceptable.*

*Certainly the rhetoric that follows something like "custom publishing", where the bookshop sets up a mini printery of its own in the back of the shop, is a very bizarre thing. The fact that it's allowed to be called "custom publishing" - well, it's custom theft. And it gets reported in the press, as a wonderful technological development, as being how clever this university is... if they were reporting on how a clever thief had worked out a new way to steal your car, it wouldn't be reported as positive news.*

Some educational publishers feel that there is a misconception by educational institutions, students and some media that publishers are out to rip people off. Photocopying is viewed as a reaction to this, to some extent, creating a "Robin Hood" approach to taking all you can for free, over the past 5-8 years.

*I think there's a bit of the: "We're breaking the dastardly rapacious hold of the big multi-national...yada yada yada...we're on the students' side", a bit of a Che Guevara... They have just assumed a mantle of virtue over it; they have taken the moral high ground.*

On the other hand, one smaller primary educational publisher explains that in the face of large volumes of photocopying of their publications in schools, they have devised some materials suitable for copying, to at least recoup something from the practice.

*If you look back ten years ago there was very little designed to be photocopied. People were photocopying stuff, but there was very little actually designed to be photocopied, either by us or by other publishers. But you could see the signs of people publishing deliberately for that market about ten years ago. There are some companies which do nothing but. We certainly entered that market in the last five or six years. It's become a little niche.*

Those publishers who say they've learned to live with photocopying explain that whilst it used to be an escalating concern, it is now fairly stable.

*If anything, ten years ago we were probably more worried about it because it was a rapidly growing thing. Today we just presume it's going to be done to a certain degree. We probably build it in more to our predictions about sales.*

## 6.4 Summary - Key Areas of Impact

- Most specialist education publishers believe photocopying to have significant, increasing, and problematic impacts on their businesses.
- Trade publishers report that photocopying has minimal impact on their businesses and their publishing decisions.
- Publishers point to their concern about a general climate or culture of photocopying, which has increased over the years.
- Publishers across the board believe that authors suffer a loss of revenue due to photocopying, and that there is a lack of awareness about this factor by those who copy.
- Educational publishers report loss of revenue and reduced quality of material due to the burgeoning of course notes in universities. They are concerned about the “semi-professional” photocopying performed to produce course notes in universities.
- Some tertiary education publishers report a shift away from humanities and soft science textbooks, in favour of professionally oriented textbooks.
- Tertiary education publishers express a concern that universities are not actively educating students about copying limits.
- Publishers in the primary and secondary education sectors report strong concerns about teachers photocopying indiscriminately.
- Across the primary, secondary and tertiary education sectors, textbook editions are being updated more quickly. Texts are said to have a shorter lifespan than ever, due, at least partially, to the impacts of photocopying.
- Reprographic equipment is becoming increasingly sophisticated, creating concerns about the impacts of better quality and larger quantities of photocopying.

## 7 Digital Copying

### 7.1 Overview

About half the publishers interviewed have implemented some provisions for online delivery and/or licensing. Of those publishers who haven't implemented changes, all, except two, are looking to implement some provisions in the foreseeable future.

Of those who have implemented provisions, some have not yet gone ahead with putting their preparations into place, for specific reasons.

The main fears about putting work online are:

- 2) Lack of revenue opportunity
- 3) Lack of safeguards: copyright legislation/protection

Many publishers fear putting their work online due to a lack of protection, and fear loss of control, "*bastardisation*" of works, and "*rampant*" copying. They feel extremely unprotected in the digital environment, in relation to online security and legislation.

Educational publishers appear to be the group most concerned about digital delivery and the problem of digital copying, especially in the tertiary education sector. At present, many are holding back on digital implementation.

Trade publishers are concerned about digital copying in specific ways, but are less likely to have implemented significant online delivery of their material.

Publishers in the professional sector are the most likely to have implemented significant delivery of material online, and are most likely to feel they have some level of control over copyright and revenue.

### 7.2 Digital Protection Concerns

Publishers feel that much more could be done by the government, through legislation, to protect digital copyright for publishers and copyright holders.

### 7.2.1 Issues for Educational Publishers

One smaller primary educational publisher said their company has completed development for online delivery of their products, and have 2000 interactive lessons in PDF format, backed up by 10,000 worksheets - all ready to go, but are being super cautious about rolling it out: "We'd go broke in a month if we put that material online now."

Another large educational publisher said:

*The only model of copyright that could have allowed us to meaningfully exploit our copyright was one that didn't permit digital copying. In the end the print model was effectively applied to the electronic system and completely subsumed the potential for an entire distribution model. ...It was a bad legislative outcome. It has given vast amounts of flexibility that really wasn't required, and didn't take into account the fact that if you own something you should be able to sell it, and effectively we can't. It defined many of our customers as being non-customers - university students, governments, libraries - as being able to take things that are produced in print and turn them into electronic versions and distribute them themselves.*

Education is a real problem area in relation to digital delivery. There is the looming question - how to police it? A company, which publishes both professional and educational material, has implemented digital delivery very successfully with their professional material, but says they would not go online with their academic material.

Some primary educational publishers are creating "value-added" websites that link to a text, sometimes including supplementary materials for students and/or teachers. They are not trying to generate revenue from these sites, or restrict access - but to produce a value-added service, due to an increasing interest in online material. Again, the question of a viable business model was raised. Some said they have already tried some pay-per-view and subscription services but without much revenue success.

*We've tried on-line delivery. We set up a fairly large database of mainly photocopying material; it had a couple of thousand pages of material in it. We started that about three years ago. But on the whole, teachers prefer printed material, at least at this stage. With the average age of teachers in their mid-forties... they are more willing to pay money for the printed form (than to tackle the technology). We certainly spent more money on it than we ever got back. In the short term anyway, print is the thing, and digital delivery is not that important. Maybe as an add-on, or supplementary material, but not as a core product, it's not on the horizon yet. We tried both subscription and pay-per-use models but neither of them seemed to generate much money.*

Another primary educational publisher said:

*We tried making our books available on CD ROMs for a while, but parents complained about how much they had to spend. In the end we did develop - are still developing companion websites - where teachers and students can go for different content to broaden the appeal of our package. When we started it we were keen to try different devices, to prevent people who weren't using our texts from getting access, but we decided, after about 18 months, it was a waste of time. It was a considerable expense, and we were kidding ourselves if we thought the whole world wanted to go there anyway. Better to give access, let them see the value of the content, and hope it would come back the other way.*

And another:

*Our online material is a supplement to our printed material. We have a smart card with codes we shrink wrap with certain textbooks (which gives) access to info on the internet. It's just an aid. Everything is still tied to the textbook. Value added. No fees for smart card access. The primary sale is that of text. We have a couple of subscription services online, like an online encyclopaedia, but it doesn't sell that great.*

One primary educational publisher points to a case where a primary school was found to be producing their own course-pack style material. They had been digitally scanning colour material like readers, compiling the material and printing it out in full colour for their students. This was viewed to be a potential problem in the primary education market, where an entire work may only be 10 pages long. The reproduction of whole short works was seen to be a real threat as digital technology becomes more accessible.

One large professional/educational publisher says she receives a number of licensing requests from tertiary education institutions each year to place certain materials on their intranet. She says, if she gives the permissions, she requests access to the intranet for a limited period (24 or 48 hours) once or twice per year, to check usage of their material. She said these requests have been denied, so she cannot determine fair and proper usage.

### **7.2.2 Issues for Trade & Professional Publishers**

Trade publishers raised the issue of digital copying, and the problems policing it.

*Risks of uncontrolled digital copying. Xerox is completely different to digital scanning. We're more worried about our work being modified in a copied context.*

One large trade publisher pointed to the issue of digital clearance in their current contracts.

*If we get clearance for cover images and illustrations, that may be on an Australian-only basis, not an international basis, then if that (material) went online, it may wind up in breach (of contract).*

Large publishers in the professional sector, who have implemented significant online delivery, are generally working with limited subscription services, rather than a pay-per-view system, this way, licenses can be overseen individually and fairly well controlled and reviewed. Payment can be calculated based on individual instances. There are still perceived copyright and revenue problems with the downloading and sharing of information.

One publisher says:

*Our only mechanism for protection is in our negotiations and our pricing structure. Online revenue is viable for us. It would be lovely if CAL could protect the digital arena but how can they?*

*Its academic books that put publishers most at risk - we would never put our academic books online - that would be the last frontier - we'd make one sale and students would download it and then its goodbye I think!*

*Photocopying is containable. Digital isn't.*

*Large law firms and government agencies often have librarians who try to make people adhere to copyright legislation - so we're not so worried there. Sometimes people do it unwittingly -but it's the Bar and small law firms that are the problem - no regard for the license, pay no attention to copyright law. Unbelievably brazen about complete disregard for copyright. I've heard barristers sitting around a table saying, "We'll just buy one copy and share it around".*

### 7.3 Business & Revenue

Some publishers noted that while they would still pursue digital delivery, they would do this as an added-value service, rather than seeing it as a viable business option with significant revenue potential. Some do not draw direct correlations between lack of revenue opportunity and lack of digital copyright protection; they're seeing digital delivery in their area as lacking a significant market.

*We're still going down the digital route, but it's really not viewed by us as an income generating activity, it's viewed as building competencies that allow us to do it in whatever environment that we're in.*

Trade publishers do have concerns about digital copying and protection, but they are less likely to have begun online delivery of materials. They point to the innovation of the e-book, but say that this online form isn't really happening yet. What they are worried about is manipulation/bastardisation of works online, they would want assurances of digital security if deciding to pursue the e-book.

*We could not move ahead with an e-book distributor, for example, unless we were totally convinced that we had those ununlockable kinds of sequences so that in fact it couldn't be copied.*

#### **7.4 CAL's Role in Digital Protection**

Publishers certainly see the opportunity for creating a safer digital environment as an important and ongoing process, and tend to see CAL having a role, though some were not sure exactly how. They see CAL as being on their side when it comes to digital protection of copyright and legislation.

*CAL was very heavily involved, and very appropriately involved in that lobbying campaign. In the end, the government's view was they'd listen to users rather than copyright holders.*

*The opportunity we have (with digital) is, because it's new, to get in there with education and awareness programs so that we don't run into the same thing where teachers see that photocopying is open slather.*

*CAL may have an important role to play in digital copyright. We were at the front of the digital wave. We have limited time and energy to lobby. As others come into the digital arena more significantly we need a body to lobby. Digital rights were lobbied from the other side - not publishers. CAL could be as good a body as any to harness publishers' interests.*

#### **7.5 Australian legislation**

Most publishers felt that legislation in Australia was substandard, and out of kilter with the rest of the world. There is a view that the Australian government does not understand digital issues from a publishers' perspective and has made wrong decisions on digital legislation that have major ramifications for Australian publishing.

*The hope was that legislation would be introduced that gave us some protection in the electronic environment, and it didn't. Australian legislation was heavily criticised by the European Scholarly Publishers Association - we are far worse off than anywhere else in the world. ... We're using a print model to cover digital.*

*Digital copyright in Australia is out of kilter with the rest of the world. We've held back from online. It would be taking a huge risk to invest in digital.*

## 7.6 Summary - Key Areas of Impact

- Half the publishers interviewed have implemented provisions for online delivery and/or licensing.
- The main fears about online publishing and licensing are lack of revenue opportunities, and lack of safeguards in relation to copyright legislation and protection. Many publishers are holding back on digital delivery for these reasons.
- Educational publishers are the group most concerned about digital delivery and the problem of digital copying, especially in the tertiary sector.
- Trade publishers are the group least likely to have implemented significant online delivery, but express concerns about digital copying and copyright safeguards.
- Publishers in the professional sector appear the most likely to have implemented significant delivery of materials online, and the most likely to be advancing revenue in this area.
- Publishers across the board are concerned that government legislation on digital copyright is weak, and that Australia's legislation does not match up to international standards.
- Publishers report a desire for CAL to take a strong leadership role in the digital arena, and want CAL to build a strong consultation process with them.
- Publishers point to the importance of creating ongoing education campaigns for users in the areas of intellectual property and digital copying.

## 8 CAL Distribution Impacts

### 8.1 Significance of Revenue

Around a third of interviewees described their CAL revenue as substantial, while an equal number described their CAL revenue as “*small but significant*”. Eight described CAL revenue as “*insignificant/small*”, and three as “*moderate*”.

*Very little impact on revenue, but it's profit. It goes straight to the bottom line. There's no costs incurred in generating that income. It's very important.*

*A moderate impact. I definitely have it in my mind. It's a lot of money. A great deal of our money stays onshore. We have strong local content, that's where we invest our money - Australian authors. With import fees, exchange rates, mark-ups etc, we're trying to counter that with local product. 90% of school product is Australian. 50% of higher education is Australian. Have totally Australian textbooks, which we just sell locally - hopefully we can make a bit more money. Australian authors are getting more prominent.*

The largest identified contribution of CAL monies as a proportion of total revenue was 10%. Other estimates tended to be 2-5%. Many publishers noted that a percentage of CAL monies go offshore. This figure varies markedly, depending on the publisher.

The largest reported proportion of CAL monies going offshore was 75%, whilst other publishers retain 100% of CAL monies locally. There is a broad spectrum of offshore splits reported between these two extremes.

Trade and educational publishers tended to estimate that their CAL monies made up around 2% or 3% of total revenue. However, almost everyone points out that as this money goes straight to the bottom line it is most welcome revenue.

One Top 40 publisher said that though CAL monies only made up about 3% of their total revenue, they estimated it made up 12% of total operating profit, after royalties had been removed. The same publisher said the loss of CAL monies would be “*a huge loss of profits, a disaster*”, that the CAL monies are “*absolutely significant*”.

## 8.2 Awareness of Revenue

Almost all publishers had a very good awareness of their annual CAL distributions.

The more recent, additional, smaller payments tend to be confusing for publishers. Many publishers said they would rather the monies be held over and grouped into larger amounts. Senior management noted that it was hard to recall overall figures if the monies were coming in sporadically.

Some managers said that as CAL data often goes straight to finance or accounts, sometimes the information bypasses them.

## 8.3 Perceptions of CAL's Distributions

About one third of publishers think CAL distributions are as fair as they can be. Another third have mixed feelings about the fairness of distributions. Only two thought the distributions were unfair overall, while three said they simply didn't know.

Within the group who had mixed opinions about the fairness of CAL's distributions, publishers pointed to specific aspects of distribution they thought were unfair, while acknowledging that other aspects, or the overall system was fair.

One smaller educational publisher in the Top 40 says, *"It's a good system. It helps people like us get recompense for stolen product."* The same publisher explains they receive \$30,000 each year or two for the copying of one series of six textbooks, demonstrating the very high levels of copying that can be concentrated on just a few works.

*It contributes in a small way to local publishing revenue, therefore encouraging local publishing to continue in the multinational arena.*

*As far as CAL is concerned, we get money that we love and it's growing each year. It is complicated for us to understand though.*

### 8.3.1 Fairness and Equity for Publishers

Sampling issues were raised the most in criticism of fairness of CAL's distribution system. Educational publishers tended to be the most critical of the sampling process. Trade publishers, for whom photocopying is a less significant issue, tend to be less concerned with sampling issues.

Educational publishers wish sampling could be wider, more comprehensive and cover the key states every year.

*I think there are major discrepancies in the sample from year to year.*

Some, however, concede that the sampling may be as good as it's going to get.

*We would have no other mechanism for recovering these monies. Obviously we receive more from some unis than others, so though the distribution is uneven its fair.*

One primary education publisher, who feels that CAL distributions are fair and equitable, made the point that while CAL may be a fair system, copying revenue can in no way substitute for actual sales.

The state-by-state issue was raised by many educational publishers. The fluctuations in revenue each year does affect the way in which the CAL monies are greeted. There is a sense that publishers would prefer a more evenly spread, predictable distribution. A number of publishers reported that the peaks and troughs of distribution, prevent them from revenue planning with CAL monies, and therefore, feel CAL monies are less significant overall because the amount is not predictable.

Some feel they are losing out when NSW or VIC are not sampled. Especially for a smaller publisher, a two-year wait for the bigger cheques is a long time.

*It's fair for the copying that gets recorded, but its not fair overall. It's a lucky dip and uneven overall; it should be smoothed out over a wider sample.*

Some publishers say that CAL distributions are fair, compared to what it would be like with no CAL, but that amounts for copying could be doubled without being excessive. A few publishers made the point that they considered copying page rates in Australia to be low on an international scale.

*It's fair in that I think it's as good as CAL could get. They've gone to very appropriate lengths to get the rate per page up to a decent amount. They haven't failed, they haven't got nearly as much as they wanted to get, but it's something. Equitable - probably no sampling system is going to be equitable. For an author to get \$13,000 one year and nothing the next is hard to explain. When they get it you say, "Don't rely on it", but inevitably they do. But is there anything that could be done about that? Other than taking everything and sitting on it for two years and evening out the payments, I don't see a solution. I think it's as good as you'd expect, that's all.*

One educational publisher, who felt that the page rates were low, remarked that CAL had recently negotiated for a page rate increase, which was seen as a very positive thing.

Some publishers, who felt the sampling system wasn't fair, also complained that they didn't understand it. They sought more transparency. Some were confused about which institutions get sampled and felt that they may be missing out on revenue from private institutions.

*We don't know. We have no idea how they do it.*

*We sell into specific markets... How do they decide how to sample? Or which schools are picked?*

*I think it's a good system - the CAL system is very good. It's a proper acknowledgment that there is some compensation to be paid due to the fact the book wasn't purchased. Yes, I think it's fair. I would question the measurement of fairness in terms of all the institutions. The basis under which it is calculated is fine, per page and everything. The issue for me is are we collecting from all the institutions on an equitable and fair basis. It's fair if everyone complies with the CAL requirements, but it's unfair if everybody doesn't do it. If University Library A pays it, and Shire of Hornsby pays it, does the AMP Society library pay it? There are a lot of private libraries with a lot of usage, and I don't know how broad the distribution is. What I'm not sure is whether everyone is paying to CAL.*

### **8.3.2 Publishers Perceptions of Equity for Authors**

A number of publishers raised the issue of fairness for authors, and said specifically that while they felt the CAL distributions were fair for publishers, they were not necessarily fair for authors. They explained that while their distributions even out over a small number of years, for the authors it was more like "winning the lottery".

*I've been to the seminars... From our point of view as publishers, yes definitely (it's a fair system). From the author's point of view, over about three years. It's fair for us over a year, but not necessarily for them. If they've written a Victorian series, they're only going to get paid every two or three years. It does also fluctuate a lot, depending on the market. One year one author might get \$5000 worth of photocopying, then they might never see it again for the next five years, but that's just the lucky part.*

## **8.4 CAL Revenue projection**

Three quarters of publishers include CAL distributions in their revenue projection. Some might not include CAL in a separate budget line but it is considered in some way. Some are taking averages on years gone by; others simply include a rough guesstimate. There is a sense in which most people err on the side

of caution and underestimate CAL monies, as many note they are not predictable and can vary so much from year to year.

*We do allow for it in our budget. We don't assume growth.*

Large increases in CAL distributions can be treated with suspicion as much as excitement. Some managers worry that they'd be held accountable if the same amount were not forthcoming the next year.

*Well they say never put it in your budget because it may not be what you expect at all. Ours went from \$110,000 two years ago to half a million last year.*

They say they cannot plan with the monies because the amount is so variable from year to year. One educational publisher, who noted their CAL distributions as comprising 10% of their total revenue, said they don't include the payments in their revenue projection because they only receive their big payment once every two years.

A few publishers say their amount is fairly similar year to year, or increasing steadily, and they can plan for it.

*Yes. In our experience it's come in over budget each year and increasing each year.*

*We can fairly accurately budget for it ahead of actually receiving the statement, because we've got enough knowledge. We were mainly NSW based, but now we have a wider spread - we're in NSW, Victoria, Western Australia - and one of those states gets surveyed every year, so now it's much more predictable for us. Within 10% for any one year we can predict, even though within any one project or book it jumps around all over the place, but overall we can generally get a good idea.*

Some publishers note that while they're not budgeting specifically for CAL distributions, they are included/estimated in an overall forecast.

*Revenue projection, no. We don't take CAL payments to the top line. We just bring it in as "other income". But if you're asking do we include it in our forecasts of the company's financial performance over the next twelve months, then the answer is yes we do. We certainly factor it in to our profit forecast.*

## 8.5 CAL Revenue - Impacts on Business Operations & Planning

Just under a quarter, felt CAL distributions had a “significant” or “moderate” impact on their business operations & planning.

Only four publishers said that CAL distributions have a “substantial” impact.

*They're considered from a cash flow point of view. Education has big swings in your busy times and quiet times, so it helps a bit when you're heading into a down time. We certainly look forward to it from a cash flow point of view.*

*It's a factor. We usually use last year's figure (as an estimate), and we'd factor that into this year's budget, and we'd accrue it across each of the months as an income stream.*

Just over three quarters of those publishers interviewed, felt CAL revenue had a small or insignificant impact on their business operations and planning, with some explaining that one of the main reasons for this was due to the unpredictability of the distribution.

*We just treat it as a bonus.*

*None, but we might (consider it in business planning) if it came as a lump sum once a year.*

*Because it's an intangible, you really can't determine which books will get it.*

*Because it comes in the way it does, you can't plan around it at all. It does change the nature of business, to a degree. If it was something we were in control of ourselves...then we would budget on it, and we would invest in it.*

## 8.6 Impact of CAL Distributions on Works Published

Other factors were seen as much more relevant than CAL distributions on types of works published.

However two publishers made the following comments:

*If our distribution amount was consistently at above \$500,000 we might start planning for it.*

*We don't sit down when we're conceiving a book and say, "If we publish this it's going to generate a profit of X and let's add 10% for our CAL distribution". We don't know enough about the CAL numbers to be able to do that. But we're sort of gearing to that point. If we knew we could predict at least some of it we might actually factor it in when deciding to publish a book. This is when I get frustrated with the sampling*

*system - the fluctuations are so wild, it's huge money, but you can't count on it, and you can't publish in anticipation of it.*

## 8.7 Summary - Key Areas of Impact

- Around a third of respondents consider CAL's distributions to be substantial, while an equal number describe CAL's financial contribution to their business as "small but significant".
- Three quarters of publishers include CAL distributions in their revenue projection. Most publishers have an excellent awareness of their annual CAL distribution figure, and all appear to report the distributions in their accounts.
- Around a third of publishers think CAL's distributions are as fair as they can be.
- Sampling issues are raised most in criticism of fairness of the distribution system. Education publishers, both large and small, hold the strongest views on this topic. Trade publishers appear fairly unconcerned with sampling issues.
- Some publishers believe that whilst the sampling system is fair for them, with the yearly fluctuations, it is not as fair for authors.
- Under a quarter of publishers felt CAL revenue had a significant impact on their business planning, many pointing to the unpredictability of distributions each year.
- Publishers do not appear to be earmarking CAL monies for specific projects, or taking CAL distributions into account in considering types of work to be published.

## 9 Secondary Distribution of CAL Payment

### 9.1 Methods of Secondary Distribution

More than half the publishers said their CAL payments are usually sent out with regular royalty payments, which tends to be twice per year. About a third said they send the CAL payment separately to royalties because of the CAL terms, but they would generally prefer to be able to include the payment with royalties.

#### 9.1.1 Identification of CAL Payment

All publishers, except one, said the CAL payment is separately identified and clearly marked.

#### 9.1.2 Minimum Distribution Amounts

About half the publishers said they always pass on the CAL monies, no matter how small. Others said they had a minimum amount, under which, the payment would be held over till the next royalty period. An average amount seemed to be \$50, with no one specifying a higher number, and some noting a smaller figure (anywhere between \$10-\$50)

The publishers who did not specify a minimum amount, said they would pass a cheque for \$12 on, because that was their duty and their contract, and they appeared to take that responsibility seriously. However, it was costly and burdensome to distribute the small amounts.

Publishers also noted that, in works with multiple authors, where page numbers are not specified in the distribution, the monies could not be reliably passed on.

#### 9.1.3 Royalties and Distribution Timeframe

Many feel the 60-day distribution period is too restrictive. Publishers would like the option to distribute CAL monies in line with other royalties.

*It doesn't conform with other royalty payments, would be easier if it did.*

Most publishers appeared to take the publisher-author contract very seriously.

### 9.1.4 Administration

Less than a quarter of publishers found CAL an administrative burden. However, administration is a problematic issue for some, especially if the publisher/author split is weighted significantly in the author's favour.

*Administration side is more than we would wish. CAL says we should send it out within a few months and we do. Our split is mostly 50/50. Do we have author's current address; if it's out of print it may be an author who no longer receives royalties from us. We've been very conscientious, gone to every effort to find author of books that went out of print 12 years ago.*

Another issue raised, even by those who did not find CAL an administration burden, was the accuracy and completeness of the distribution data. Though many understand that CAL provides the data as it was written on the sampling sheets, ISBNs or page numbers are often missing. This creates a lot of extra administrative work, as most publishers say they will spend a good deal of time trying to accurately identify every distribution. Sometimes it leaves them with no way of distributing the money. If five authors are credited on a book, and there's no page number, it is impossible to distribute correctly.

*CAL administration is time consuming - involves five different staff members checking if its our title, distributing monies. Vast amount of paperwork. Should be streamlined. In many cases, titles are not ours anymore, may have been reacquired. CAL needs better databases, update their titles, ISBN numbers. We need workable information.*

A number of publishers wished that the CAL data were electronically available. Many are unaware that this service is available. Those who do receive the data electronically often made a point of commenting how much easier this made administration.

A number of trade publishers made comparisons with PLR. CAL is seen to be much more administratively complex than PLR.

*CAL pays us, then we have to administer that money. Sometimes the information they give us is not sufficient, and we have to do an investigation of our own. It's a big administrative job.*

A few trade publishers said they would prefer CAL to administer the funds like PLR, sending cheques directly to authors and publishers, but overall, they were in the definite minority in this study.

*I think CAL should do the administration work itself, as PLR and ELR do. They have registrations from us and the author, and they won't pay on the title unless they've received both those registrations. That would create a lot more admin. for*

*CAL. We do like to get the money, but they make it difficult for us to administer, and to figure out what's going on.*

Mostly the larger professional and educational publishers, especially where 50/50 splits were in place, didn't feel CAL was an administrative burden. Systems have been in place for some time, and standardised procedures developed through their royalties departments. The main difficulty raised was incomplete data (missing ISBNs or page numbers) hindering full distribution.

*Its part of our business now, the administration is not a burden. Systems have been in place for a while now within our royalties department.*

## 9.2 Authors' Registration with CAL

Some publishers raised the issue of separate author membership with CAL as a significant problem. Of those publishers interviewed, many said that they almost never receive cheques back from their authors.

In this study, trade publishers tended to be the most concerned about this issue. Large professional and educational companies tended to be the least concerned.

Those who complained about it also said they had specifically requested author-distribution information from CAL, and were not given the information. There was resentment about that. *"Why isn't it transparent?"*

One large trade publisher explained that it is inefficient and inequitable if an author's CAL cheque bypasses the royalties system. In the first instance, an author may have an advance, which is yet to be repaid. If an author's payment bypasses the royalties department, the CAL monies are not accrued against an advance. The publisher points out that this can actually be detrimental for an author, when their past royalties record is being examined to determine how successful they have been.

*All the streams need to flow through royalty, that's an important part of publishing these days.*

*I don't agree with the fact of it being registered with the author. Sometimes there might be five authors on a project, so they've got to work out not only how much comes to us but how much goes to each of the authors. I don't think that it's a good idea that if authors are registered, they get the whole payment.*

*Whilst I'm obliged to distribute the cheque I get to the authors within 60 days, based on our contractual obligations, we don't seem to be getting anything from the authors. Perhaps CAL could send the publisher a statement of what distribution has*

*gone directly to authors.... I did ask CAL for it one year, and it was substantial.*

*Our contract has it that authors would appoint us as agents for their CAL payments, and that's how we would prefer to do it.*

A number of other publishers raised the issue of authors receiving separate payments from CAL, but didn't see it as a big issue. Some say they know their authors are receiving monies and not passing a cheque back to them, often simply out of oversight, and say its not a big enough issue to cause a fuss. Only a small number of publishers said that their authors were sending them a cheque, though they couldn't be sure if it was the correct amount or not.

*Some are registered separately with CAL, we don't get cheques back from them but I wouldn't worry about it. It wouldn't be worth it.*

Many publishers don't want authors to be given the responsibility of administering and calculating splits. They say authors might just keep the money without even realising there's some due to the publisher or another author.

*(Regarding authors who are members of CAL) we do have a list of authors who are registered, and occasionally we might look at that list to see which authors have received payment. But it's not easy to do that, and you don't want to be sending letters off to authors asking them what they've been paid. We believe that the distributions are more likely to go the way they should if the distribution goes through publishers.*

One publisher pointed to the fact that in some of their contracts, they've given an author an upfront fee, and no royalty entitlements. If the author registers separately with CAL, however, they may still be getting money for that publication, outside the terms of the original contract.

All publishers who thought it was a problematic issue said they had no real way of knowing or checking, either which of their authors were members of CAL or when, if, and how much they were receiving cheques from CAL.

The major perceived problems with separate author registration are:

- The contract between the author and publisher had been 100% royalties to publisher, and yet the author was in fact receiving 100% of CAL monies.
- In the case of multiple authors, where one author was a member of CAL, but the others were not, that one author would receive the cheque and often not pass it on to either the publisher or the other authors.

- Where authors had received a publishers' advance, which royalties had not yet paid off. They saw the CAL monies as a part of royalties, which were not being registered by them. In fact CAL monies would normally be used to offset unbalanced advances.

### 9.3 Secondary Distribution and the Publisher-Author Relationship

Around a third said CAL distributions did not affect their relationship with their authors in any way. Around two thirds felt that it did to some extent.

The issue of authors' separate registration with CAL was certainly raised here, covering the same issues as discussed in the previous section.

The way publishers view authors' reactions to CAL monies are a very mixed bag. Some say the authors love getting the monies, especially when the amounts can be sizable (usually in educational sectors).

*A few authors get large payments and are naturally delighted.*

*Authors are very pleased with CAL monies. Some can get a large amount. I'd say 99% of our authors are happy with the CAL monies.*

*Mostly they're pleasantly surprised. In some cases (the payments) have been going up even when sales have dropped.*

One publisher noted that authors think that the publisher has a role in determining how much money they are receiving from CAL and this can lead to misunderstanding and disappointment.

Some publishers say the authors get disappointed because they may only receive a distribution once in five years, or once ever, and there's often no way of predicting or standardising that, so they're having to caution authors against disappointment next year.

*It's just seen as a windfall by them. The only problem is if they get a large amount unexpectedly, then expect that amount in the future. When it occurs we warn them - "don't expect that next time". But it does strengthen the contact with the author - makes them realise there is an agency there that's looking after their interests.*

One educational publisher says that their authors often get sizable amounts they can rely on every two years, and some authors actually budget on it. The same publisher said that it creates a "nice feeling" between the author and the publisher.

Most trade publishers see CAL distributions as a nice benefit to their authors, more so than to themselves, but they see benefits to their authors as an important thing.

#### 9.4 Contractual Splits - Publishers' Attitudes

Many publishers are using a contractual split of 50/50, however there are significant variations amongst publishers, and within individual publishing companies. It is not uncommon for publishers to have different splits with different authors. One large trade publisher had a 75/25 author/publisher split, and this obviously affected their attitude about the levels of administration required to pass on CAL monies. A couple of publishers specified a 100% fee up front, with no royalties or CAL monies subsequently passed to the author. Some academic publishers changed the author split depending upon their track record/experience, though their standard split tended to be 50/50.

There's a sense that the freedom to determine the contractual split is a right publishers consider very important, and there is a strong sense that CAL has no right or place to standardise the splits.

Publishers overwhelmingly expressed the opinion that the split should be a matter for the publisher and the author to decide. It was seen as part of an overall contract.

*Publishers rights departments are important. (Distributions) should go through publisher- CAL shouldn't be a copyright clearance house.*

*Contractually the author and the publisher have a relationship where it should be clearly spelt out. As to whether a third party (CAL) should have any influence over that relationship, the answer is no. They're not part of the contractual relationship, irrespective of the fact that they do collect and provide income for both.*

Three trade publishers, however, favoured a PLR type system, where the monies are being split and sent separately by CAL, but the issue being the industry agreeing on a split.

*It'd be simpler if CAL did distribution as with ELR & PLR. It would make things simpler. I'd favour 50/50 split.*

In some cases, large publishers may have an advanced, sometimes offshore royalty department, and in these cases, having CAL administer money to authors/publishers simply wouldn't work.

One smaller (Top 40) educational publisher said they feel a 50/50 split is fair but wouldn't want CAL having a determining role in that decision.

*Contractually the author and the publisher have a relationship where it should be clearly spelt out. But we always get 50-50, that's our position. As to whether a third party (CAL) should have any influence over that relationship, the answer is no. They're not part of the contractual relationship, irrespective of the fact that they do collect and provide income for both.*

## 9.5 CAL's Copying Data

### 9.5.1 Publishers' Awareness of Copying Data

Most publishers interviewed said they do see the CAL data. Some publishers think copying data could be more workable, streamlined. Some note it would be easier to administer if same author and book title were always grouped together on the copying data.

A number of publishers said they would like more information about the sampling that relates to the distribution.

### 9.5.2 Publishers Use of Copying Data

Only a small number reported that they do make use of the copying data. A few have said they don't but probably should.

*I find it useful to know which of my books are being copied. Sometimes I think we might make more money out of the CAL cheques than from sales. We might only sell ten copies in a year but make \$1000 on photocopying. Sometimes I think we should give the book away but say, "You must photocopy it".*

*I do factor in that I'm always interested each year to see any new titles - Ah they really do like that series, so maybe we'll do more of those.*

*There is a real correlation between big selling textbooks, and big CAL payments, especially between maths textbooks and CAL payments. Also if sales are going up overall you'd expect your CAL payments to go up.*

*No, but that's probably something I should start to do - another thing for the marketing plan.*

A typical quote is, "there's some comparison, but no real conclusions drawn. It doesn't affect publishing decisions but informs discussion."

Some publishers have given examples to suggest that they are analysing the CAL data more closely than they report they are. They appear to be comparing numbers, calculating percentages, making estimates about business overall.

More than half said they weren't making use of the data at all. It's viewed as too removed and too distant, and they don't feel they can influence it.

*No hope of getting more revenue from copying. It's like second hand book market - just something we have to live with.*

*I like to sell at least 60% of my print run within the first two months of release. The CAL cheque could be years away...*

## 9.6 Summary - Key Areas of Impact

- More than half the respondents send CAL payments out twice yearly with regular royalty payments, whilst one third appear to be distributing strictly within the 60-day period.
- A number of publishers believe the 60-day distribution period should be more flexible, in order to bring CAL payments in line with other royalty payments and reduce administrative burden and cost.
- Around half the publishers pass on amounts to authors, no matter how small.
- Missing ISBNs and page numbers prove large hurdles for accurate secondary distribution to authors, and cause anxiety and administrative burden for publishers.
- A number of publishers did not know the CAL data was available electronically. Those who were receiving the CAL data electronically say that it makes administration much easier.
- The majority of publishers appear to find CAL's overall administration system reasonable. The majority have gotten used to the process, especially where it is in line with their own royalties system. Trade publishers are most likely to have problems with administration, whilst education and professional publishers are unlikely to view CAL's administration as a burden.
- Publishers do not want CAL to have any role in standardising contractual splits. They overwhelmingly believe that should be a matter between the publisher and author.

- Some publishers are concerned about authors' separate registration with CAL. The publishers most concerned about this matter are trade publishers. Large professional and educational publishers appear least concerned with this issue.
- Where authors understandably have no systematic way of calculating and administering a secondary split, back to publishers or other authors, it appears these monies are often not being passed on correctly. Some publishers reported requesting data from CAL about author registration, but said they had not received it. Publishers want a sure way of checking what amounts their authors had received from CAL.

**The issues raised in relation to author splits are:**

- The contract between the author and publisher had been 100% royalties to publisher, and yet the author was in fact receiving 100% of CAL monies.
- In the case of multiple authors, where one author was a member of CAL, but the others were not, that one author would receive the cheque and probably not pass it on to either the publisher or the other authors.
- Where authors had received a publishers' advance, which royalties had not yet paid off. They saw the CAL monies as a part of royalties, which were not being registered by them. In fact CAL monies would normally be used to offset unbalanced advances.

## 10 Impact of CAL Overall

### 10.1 Overview

About three quarters of publishers said there would be a significant negative impact, if CAL no longer existed. Twenty-two out of twenty five rated the impact as “significant” or “moderate”. Only three publishers said it would have an “insignificant” impact if CAL were no longer active.

The primary response here was, “it wouldn’t really impact our revenue hugely but it would be a great loss overall. Who would protect our copyright? We need a body doing that.”

Even if CAL revenue is seen as additional rather than core revenue, as a body it is seen as very important, and the impact considered with its loss would rate over all as substantial.

*We’d get very sad. We’d get very angry! CAL may not be perfect... but basically it’s providing a service in a market that’s complicated enough, and if after five or six years of getting something.... We would definitely miss it. But it’s not really about the amount - it’s about the process.*

The infrastructure of CAL is seen as very important. A trade publisher, who described CAL’s impact on their company’s revenue as small, said, “I’d go out on the street to protect CAL. It keeps people honest. It’s a moral issue.”

Many publishers seem to feel that CAL’s role in protecting copyright is equally important to copying revenue. Even those publishers who seem to have a number of criticisms of CAL are noting a *significant* impact if CAL weren’t around.

More than half feel that CAL’s role as a lobbyist is very significant.

*If CAL were to disappear it would undermine the system of copyright. Its not just revenue, it’s the principle, exercising the right. Copyright and moral right are as important as the revenue.*

*With CAL there, it’s part of a whole statutory framework, it makes everyone feel secure.*

*It would definitely have an impact. We can’t stop people photocopying our work, no matter what we do. So it is some compensation for the copying that does take place. And the impact is not just on the bottom line. It’s also about how you feel about your business - there is someone protecting the work of authors and illustrators and also the investment you’ve put in to the development of the product. It goes beyond the monetary issue, but both are equally important.*

One publisher who feels CAL is absolutely important, also used the opportunity to comment:

*I do think that among education publishers there's a view that CAL doesn't particularly work for us. You can say there's a communication problem and they'll say, "We're here and you can talk to us", and so on, but I actually do wonder sometimes who they're working for or with. CAL has too much of a highbrow approach.*

## 10.2 Perceived Impact on Authors

Some publishers note that if CAL were to disappear, it would greatly impact on their authors.

*I'd cry. Impact on authors - its pretty tough out there. Its blood sweat and tears as an author and this is some recompense. We are rewarded - publishers and authors.*

*The biggest impact would be on the author. Financial impact (for publisher) not huge. It protects authors' income. Recompense for back prints. Keeps people honest. Moral issue of copyright.*

*Would be more alarming for author than publisher. Publisher stands up and manages authors' work. We don't really make much money out of it as a publisher.*

## 10.3 Financial Impact

Just under a third of publishers said if CAL disappeared, it would impact their revenue in a significant way.

*Huge impact. Hundreds of thousands of dollars lost. Lose profit. The profit contribution this company gets from CAL is absolutely significant. It's compensation. It brings home to users especially in schools about copyright.*

*It would be less profitable, the impact would be noticed. It would probably effect new investments, how many people you employed. You would have to curtail something here and there.*

*It's very important. The criticisms I have are more about the way it's executed, and not about its validity or value. It serves a very important function, it does reward copyright holders beyond what they would otherwise get, and it does reduce the loss of legitimate earnings. But could it be done better? Yes I think it could be.*

## 10.4 Summary - Key Areas of Impact

- Around three quarters of publishers felt their business and the industry overall would be significantly impacted if CAL no longer existed.
- The infrastructure of CAL is viewed as very important. Well over half considered CAL's lobbying role very important.
- Many publishers feel that CAL's role in protecting copyright is equally important to the copying revenue it provides.
- Publishers note the importance of CAL to in protecting authors' copyright and income.
- Just under a third noted that their revenue would be significantly affected if CAL were to disappear.

## **APPENDIX - INTERVIEW GUIDE**

## The Interview Guide

An interview guide was used by **amr interactive** interviewers to prompt discussion in two key areas:

- Firstly, the impacts of photo & digital copying on the sales and economics of publishing operations in Australia.
- Secondly, the impacts of CAL's financial distributions to publishers.

Participants were assured of complete anonymity and told their responses would only be tabled with overall data.

Interviews addressed the following key areas:

### Section 1: Copying Impacts

- Impacts of photocopying on publishers' businesses.
- Impacts of photocopying on specific publishing decisions.
- Impacts of photocopying over time
- The current and anticipated impacts of digital copying on publishers' businesses

### Section 2: Distribution Impacts

- Awareness and significance of levels of CAL distribution.
- Perceptions of equity in relation to CAL's distribution.
- Reporting and accounting for CAL's distribution.
- The impact of CAL's distribution on business operations and planning.
- The impact of CAL's distribution on publishing decisions.
- Methods of secondary distribution of CAL monies.
- Attitudes towards secondary distribution of CAL monies.
- The effect of secondary distribution on the publisher/author relationship
- Awareness and use of CAL's copying data.
- Perceived impact if publishers no longer received CAL's distributions.