

Copyright Code Review
Director, Emerging Policy Issues
Bureau of Communications and Arts Research
Department of Communications and the Arts
codereview@communications.gov.au

29 September 2017

**Re: Submission in Response to the Review of the Code of Conduct for
Copyright Collecting Societies Discussion Paper**

The National Association for the Visual Arts (NAVA) welcomes the opportunity to respond to the Review of the Code of Conduct for Copyright Collecting Societies Discussion Paper.

1. About NAVA

The National Association for the Visual Arts (NAVA) is the peak body representing the professional interests of the Australian visual and media arts, craft and design sector, comprising of 20,000 practitioners, galleries and other art organisations. Since its establishment in 1983, NAVA has been influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry.

NAVA provides advocacy and representation for the sector and sets industry standards. It has had a long commitment to copyright entitlements for visual creators and in 1995, was responsible for the establishment of Viscopy - the visual arts copyright collecting agency for Australia. NAVA also was a vigorous advocate for the introduction of both moral rights and resale royalty rights legislation in Australia.

NAVA provides professional services to its constituents through offering expert advice and referrals, grants, career development opportunities and training, online and hard copy resources and a range of other services. Of the estimated 2,500 requests for advice received by NAVA each year, approximately 13% are about copyright.

2. NAVA's Position on the Conduct of Copyright Collecting Societies.

NAVA is dedicated to achieving the most conducive possible environment for Australian visual culture. This means ensuring the viability of artists' careers and the sustainability of their support organisations. It also means trying to secure legislation, policy and regulation that achieves this purpose.

PO BOX 60, POTTS POINT, NSW 1335 | +61 2 9368 1900 | VISUALARTS.NET.AU | NAVA@VISUALARTS.NET.AU

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NAVA supports the work of copyright collecting societies as they directly benefit artists by protecting and supporting the economic rights of artists who otherwise may be taken advantage of by licensees or users.

NAVA believes that collecting societies are integral in ensuring positive income generation for artists, and that these societies are effectively meeting national standards of transparency and accountability through well implemented governance measures and compliance to the voluntary Code of Conduct for Copyright Collecting Societies (the Code). NAVA suggests that any additional conditions may impact on the administration of copyright collecting societies which by extension, could increase the fees artists have to pay to these societies.

For NAVA, an important consideration for copyright collecting agencies is ensuring equity in distribution across the many different art forms. Artworks, including digital, sculptural, public, and paintings are increasingly displayed online. As the digital platforms increase in popularity to share artworks, the unauthorised use of these artworks viewed, shared and copied online is also on the rise. In this regard, extra attention from collecting societies needs to be given to safeguarding the distribution of royalties and funds equally across these various art forms and that artists are not unduly impacted by technological change.

3. Artist Considerations

In considering the digital and the physical environment, it is important to acknowledge that artists' contribution to the community not only has economic value, but also social and cultural value, the first enabling the other two.

NAVA's research conducted in August 2014, which surveyed 459 artists and arts industry professionals, asked the question **"Do you believe copyright is an important right for artists to have?"** 88.2% of the survey respondents identified copyright as important for artists to have their work protected against unauthorised use. This research also revealed that 20.1% of respondents have had their copyright infringed and of these infringement cases, only 29.3% of respondents were successful in having the infringement material taken down in the digital realm.

Hence, where artists are already making considerably less than minimum wage, their rights that protect a source of their income is significant. Copyright collecting societies are largely responsible for protecting these rights for artists and NAVA strongly supports the work conducted by these collecting societies.

SECTION 1: OVERVIEW OF COLLECTING SOCIETIES

Question 1: To what extent is the Code meeting its original purpose: to ensure collecting societies operate ‘efficiently, effectively and equitably’? If it is not meeting its original purpose, do the Code’s state objectives need to be revisited to better deliver on its purpose?

NAVA views the Code as sufficiently meeting its original purpose in ensuring collecting societies operate ‘efficiently, effectively and equitably’ and acknowledges that it is one form of regulation governing copyright collecting societies.

Question 2: How effective is the Code in regulating the behaviour of collecting societies? Does it remain fit-for-purpose?

Along with the requirements of producing annual reports, regular reports, tracking where members’ funds go, NAVA views the Code as efficient in regulating the behaviour of collecting societies.

Question 3: Is there sufficient clarity as to how the Code interacts with the broader regulatory framework? Should the Code be modified to help parties better understand the broader legislative obligations of collecting societies?

NAVA believes the Code is sufficient in clarifying how the Code interacts with the broader regulatory framework. Along with the independent Tribunal and the collecting societies’ adherence to the terms of the *Corporations Act 2001* (Cth) and its privacy obligations under the *Privacy Act in 1988* (Cth), the Code is adequately addressing the obligations that is required of collecting societies.

The Code requires collecting societies to observe legal frameworks and NAVA supports the Australian Copyright Council’s position on the possibility of producing support material that details this regulatory environment for copyright collecting societies.

Question 4: Consider the differences in the way different collecting societies operate, is a framework in which a single code applies to all societies effective?

Despite the differences in how collecting societies operate, NAVA believes that the Code is sufficiently adhering and complimenting the broader regulatory framework, and a single Code when applied to the industry as a whole, is effective in regulating across the various collecting societies.

Question 5: What have been the impacts of the internet on the collecting society business model?

With increasing consumer preferences shifting from physical to digital realms such as renting or subscribing to access digital content or online art auctions, the internet has had an enormous impact on licensing and distribution of creative materials. The specific impacts are best discussed by copyright collecting societies themselves.

Question 6: What administrative costs has digitalisation enabled collecting societies to reduce or avoid? How has digitalisation impacted on the way collecting societies collect and distribute funds?

Copyright collecting societies are best placed to respond to the impact of this on their business models.

SECTION 2: ADDRESSING IMPEDIMENTS TO EFFICIENCY AND EFFECTIVENESS

Question 7: Are additional measures needed to ensure licensees have greater transparency over how their licence fees are calculated? If so, how could this be achieved?

NAVA affirms that the Code is effective in providing transparency to members about their license fees, which by extension, promotes the efficiency and fairness of the license system and the Code. NAVA believes this, alongside the Copyright Tribunal's capacity to make decisions and resolve licensing disputes means current measures are sufficient and additional measures are not required.

Question 8: What additional measures may be needed to achieve greater transparency in the distributions of funds? How could these measures be implemented?

Members of copyright collecting societies are able to earn an income from the distribution of funds and this is essential for ensuring stronger career opportunities, particularly for artists. NAVA believes in the equitable distribution of funds across artforms, and this is currently being implemented.

As the Australian Copyright Council notes, there does need to be a balance between transparency and protecting commercially sensitive or private information.

Question 9: Should there be more guidance around the treatment of undistributed funds held in trust? If so, what specific issues should this address?

NAVA believes the current regulation enforced by the Code via annual reports, regular audits and financial tracking, alongside membership accountability and internal governance responsibilities is effective enough in providing transparency to its members.

Question 10: How could safeguards be strengthened to improve reporting and financial record keeping by collective societies? What would be the impact of more robust reporting obligations?

It is important to note that there needs to be a balance of reporting requirements that minimises unfair use of funds with extra costs that may affect members income if further regulations are put in place.

Question 11: How effective is the Code in facilitating efficient, fair and low-cost dispute resolution for members and licensees? What alternative models could be considered to provide these outcomes?

The Code is one mechanism that collecting societies can draw on for dispute resolution, this alongside internal policies and procedures can address the distinctive disputes of each collecting society.

Question 12: Does the Code Reviewer have sufficient powers to make collective societies accountable for their compliance with the Code? If not, what alternative monitoring and review processes could be introduced to improve outcomes for members and licensees?

With dispute mechanisms in place for members and licensees, NAVA supports the current role of the Code reviewer.

Question 13: Does the Code adequately balance the interests of members and licensees? If not, what criteria could be used to assess whether that balance is achieved?

NAVA believes that the Code does adequately balance the interests of members and licensees, specifically in ensuring appropriate complaints handling mechanisms.

Question 14: Does the Code need to be improved to better ensure collective societies act in the best interests of their members? How could members be given a greater say in a collecting society's key policies and procedures, such as the distribution of funds and use of non-distributable amounts?

Decisions on where members' funds go should be in the best interests of the members, and under the Corporations Act, directors of each of the collecting societies must act in the best interest of their members. Copyright Collecting Societies exist to allow members to gain maximum benefit from their work, this is their core business, and the role of the Code in this activity would appear unnecessary.

SECTION 3: REGULATORY APPROACHES- INTERNATIONAL & DOMESTIC PRECEDENTS

Question 15: What would be the costs and benefits of prescribing the Code under legislation? What factors should be considered and which are most important in weighing the costs and benefits?

With the current governance framework of collecting societies in Australia based on a combination of government regulation via legislation and self-regulation via the Code, NAVA believes that making the Code mandatory will increase accountability. However, analysis of the costs in maintaining legislation, which will in turn, increase administrative costs for collecting societies should be considered. The costs for governance and regulation should not detract from the benefits of copyright collecting societies to members, including financial support. Thus, NAVA believes cooperative self-regulation across the various collecting societies and strong governance is sufficient to enforce compliance and promote fairness across the board.

Question 16: Which international regulatory models, or aspects thereof, could best meet the objectives of improving the fairness and efficiency of copyright collecting societies? How feasible is the introduction of these models in Australia and what would be the impact on collecting societies, members and licensees?

The EU Directive that establishes minimum standards of governance, financial management and transparency for CMOs, was developed to respond to a collective management system across Europe.


The existence of a specialist copyright tribunal in Australia reveals the value and importance of copyright in our nation, which contrasts with other countries where their copyright cases are dealt with in the general courts. A specialist tribunal means that copyright cases are handled with attention and care in this specific area of contention.

NAVA believes that the current adherence to the Code and resolving disputes via a specialist copyright Tribunal is sufficient.

Question 17: Are there features of other domestic industry codes that could be adopted to improve the fairness and efficiency of Australia's collecting societies?

While voluntary codes of conduct in other domestic industries are designed to deal with competitors within the industry, each Australian collecting society tends to be a single entity responsible for a different type of class of copyright. This is why NAVA believes current measures are sufficient.

Please do not hesitate to contact us if we can provide any further information or assistance.

Handwritten signatures of Brianna Munting and Penelope Benton in black ink.

Brianna Munting and Penelope Benton
A/Co-Executive Directors
National Association for the Visual Arts