

AUSTRALIAN ARTS LAW UPDATE
COPYRIGHT COLLECTING SOCIETIES ADOPT NEW CODE OF CONDUCT

SIMON ETHERINGTON¹

[237] Copyright collecting societies have developed and adopted a new code of conduct. The Code sets out the functions and responsibilities of collecting societies. It aims to identify and articulate best practice standards of conduct for collecting societies — especially in relation to accountability and transparency. It is hoped this will enhance the confidence of the members, licensees and the public in the collecting societies.

About the Code

The need for a code to regulate collecting societies was identified in two government reports:

- *Don't Stop the Music (1998)*, a report of the House of Representatives Standing Committee on Legal and Constitutional Affairs; and
- *Review of Australian Copyright Collecting Societies (1995)* by Shane Simpson which was endorsed by the Federal Government in 2000.

Accordingly, at the request of the government, the collecting societies have developed a new Code providing for their self-regulation. The Code has been developed in consultation with government and interested non-government organisations. The Code has been endorsed by the Federal Attorney-General and Minister for Communications, Information Technology and the Arts.

What does the Code say?

The *objectives* of the Code are to promote awareness of copyright and collecting societies, to promote confidence in the collecting societies, to set out the standards of service that members and licensees can expect from collecting societies and to [238]

¹ Legal Officer, Arts Law Centre of Australia, with thanks for the assistance of George Paramanatham, Legal Officer, Elizabeth Beal, Supervising Legal Officer and Elizabeth Coleman, Volunteer, Arts Law Centre of Australia.

provide for fair, efficient and low-cost complaint handling and dispute resolution procedures.

The Code sets out the *obligations of collecting societies* to their members and licensees and it emphasises the importance of accountability and efficiency. Provision is made for collecting societies to develop policies for distribution of remuneration and licence fees and for the good governance of the collecting societies. There are also detailed provisions about collecting societies' obligations to educate the public and improve awareness about copyright and collecting societies.

The Code requires collecting societies to develop and adopt *complaint handling procedures* in accordance with Australian Standards. The complaint procedures need only apply to complaints about matters that are covered by the Code. However, it is open to the individual collecting societies to make their procedures more widely applicable.

The collecting societies must appoint a *Code Reviewer*. The Code Reviewer must monitor and report on compliance with the Code and review the Code, in consultation with government and non-government organisations, at least every three years.

What is the Code's status?

The Code is not binding and no penalties are prescribed for its breach. The Code applies only to those collecting societies who adopt it. Each collecting society is free to decide whether or not to adopt the Code. At the time of writing APRA, AMCOS, CAL, PPCA, Screenrights and VISCOPY have already adopted the Code. Other collecting societies are yet to confirm their positions.

Zomba Production Music (Australia) v Roadhouse Productions

In the case of *Zomba Production Music (Australia) Pty Ltd & Ors v Roadhouse Productions Pty Limited (in liq) & Anor* last year,² the Federal Court upheld the rights of creators of musical works. The Court found the copyright in those works had been

² [2001] FCA 1526 (31 October 2001) (Stone J).

infringed by their reproduction in the soundtrack of two episodes of the television program *Rex Hunt's Fishing Adventures*.

The applicants were the copyright owners and exclusive licensee in Australia of musical works and sound recordings of those musical works. The respondents were the production company of the television program *Rex Hunt's Fishing Adventures* and its Executive Producer respectively. The musical works were included in two episodes of *Rex Hunt's Fishing Adventures* which were later broadcast on Channel Seven and on Discovery Channel, but the permission of the copyright owners was never obtained.

The applicants alleged that the respondents had reproduced and broadcast, or authorised the reproduction and broadcast of, the television program containing their musical works without permission. Accordingly the applicants sought to hold the respondents liable for copyright infringement. The respondents did not appear or defend themselves in the proceedings. The Court found for the applicants.

Although the respondents in the case did not appear in the proceedings, the Court was willing to infer that they had produced the television program and authorized its broadcast on the basis that their names appeared in the credits. The Court made this inference in accordance with the *Copyright Act 1968*. Section 131 of the Act provides that where a person's name appears on copies of a film in such a way as to imply they made the film, that person is presumed actually to have made the film.

This approach to interpreting s 131 is more liberal than the approach the Court has taken previously. In an earlier case the Court held that the s 131 presumption would only apply to corporations where the name appearing on copies of the film was the 'very name' of the corporation.³ In *Zomba* the Court relaxed this requirement a little by holding that the name that appeared on the film did not have to be [239] exactly the same as the company's actual name. In this instance the only difference between the names was that the 'Pty Ltd' part of Roadhouse Productions Pty Ltd's actual name was not included in the name shown on the film at the end of the credits. The Court

³ See *Film Investment Corporation of New Zealand v Golden Editions Pty Ltd* (1994) 28 IPR 1.

decided this difference was not material and held that it is permissible to disregard the 'Pty Ltd' or 'Inc' part of a company's name when applying s 131.

The Court was willing to infer that Roadhouse Productions made the television program on the basis that its name appeared at the end of the credits. On this basis the court was also willing to infer that Roadhouse Productions had authorized the broadcast of the television program. Further, the Court found that Gregory Numa had authorised Roadhouse's infringements of copyright because he was the company's sole director, he was described as the 'Executive Producer' in the credits of the program and he had been known to represent Roadhouse's interests on other occasions.

Litigators will be interested to note that the court was willing to make an order that the applicants have leave to tax their costs immediately. In this regard the court took notice of the second respondent's declared intention to ignore the proceedings. Presumably his failure to appear throughout the proceedings was also relevant. However, the applicants were not successful with their ambitious claim that the respondents be restrained from authorising the broadcast of 'any and all works controlled by the applicants' as there was no justification for such broad orders to be made.