

SUBMISSION TO THE

DRAFT REPORT OF THE REVIEW OF THE CODE OF CONDUCT FOR COPYRIGHT COLLECTING SOCIETIES.

14 March 2018

Universities Australia is pleased to have this opportunity to comment on the draft report of the Review of Code of Conduct for Australian Copyright Collecting Societies (Draft Report).

TRANSPARENCY

UA welcomes the acknowledgement in the Draft Report of the need to improve transparency in collecting society operations. In our submission to the Code of Conduct Review, we raised concerns about the lack of transparency around collecting societies' use of statutory funds - including roll over funds - as well as a lack of transparency around the beneficiaries of the payments made by education sector licensees. The Draft Report includes a number of recommendations, in particular draft recommendations 4 to 10, that would go some way towards addressing these concerns.

UA's preferred position is for these obligations to be contained in mandatory guidelines, on the basis that it should not be a matter for declared collecting societies to determine what standards of transparency should apply to their operations. Nevertheless, as a positive first step, UA supports the recommendations for amendments to the voluntary Code of Conduct to deal with transparency concerns.

Improving transparency in the ways recommended in the Draft Report is important to reforming the governance arrangements that apply to collecting societies. We wish to stress however, that the changes proposed do not address the other concerns raised by UA in the course of this review. We are still of the view that the degree of discretion afforded the declared collecting societies regarding how statutory funds will be used, is too high; and the level of effective oversight of the operations of declared collecting societies, too low. While we appreciate these issues may fall outside the scope of the current review, *we urge the Bureau to include a recommendation in its final report for a holistic review of the governance arrangements applying to declared collecting societies.*

DRAFT GOVERNANCE RECOMMENDATIONS

The Draft Report contains a number of recommendations dealing with governance arrangements applying to collecting societies. These all involve amendments to the voluntary Code of Conduct. As outlined in our submission to the Code of Conduct review, UA considers that there are fundamentally different issues at stake when considering the governance arrangements that should apply to declared collecting societies as opposed to non-declared collecting societies, and that *a voluntary Code of Conduct is not an appropriate mechanism for governing the operations of declared collecting societies.* For that reason, we do not intend to comment on the draft governance recommendations in our response to the Draft Report.

A MECHANISM FOR FURTHER REVIEW

The Draft Report suggests that “there may be merit in considering the role of the Guidelines for the Declaration of Collecting Societies” (***the Guidelines***) in addressing the governance issues that were raised by UA and other declared collecting society stakeholders.

Universities Australia submits that there is a need to review the Guidelines for the purpose of updating them to take account of changes to the educational statutory licences enacted by the *Copyright Amendment (Disability and Other Measures) Act 2017*. This provides an ideal opportunity to undertake a comprehensive review of the governance arrangements applying to declared collecting societies. As outlined in our submission to the Code of Conduct Review, we consider that a fit-for-purpose regulatory regime for declared collecting societies would include *mandatory* obligations of transparency and accountability, as well as an effective mechanism (such as ACCC oversight) to ensure that declared collecting societies do not inappropriately exploit their market power.