

THE COPYRIGHT TRIBUNAL

A paper given by Shane Simpson at a conference presented on 23rd June 1995 by the Commonwealth Attorney General's Department, the Copyright Society of Australia and the Australian Copyright Council, discussing the role of the Ombudsman as a complaint mechanism for copyright collecting societies.

COMPLAINTS MECHANISMS AND THE COLLECTIVE ADMINISTRATION OF COPYRIGHT

It is clear from the Inquiry, that there have been complaints about the societies from both rights owners and rights users. One would not expect otherwise. This is normal in any organisation.

The issue is not whether people complain but rather:

- why they complain,
- whether the complaints are well founded and, if they are,
- how they are dealt with.

The root of many of the complaints come down to a lack of communication with the relevant community. (By the term "relevant community", I mean rights owners, rights users, as well as those who are neither, but are nevertheless affected by the collecting society). Poor communication is the root of many of the complaints made about Collecting Societies.

Communication

On the whole, the societies do a good job of being collecting and distribution machines. They are not good communicators and educators. They do not give sufficient importance to this role.

They do not do enough to educate and inform their relevant community as to:

- what they do
- how they do it
- why they do it that way
- what they have achieved
- what changes they are trying or planning to implement
- what they intend to achieve, and

- how the relevant community benefits from their operation.

The societies have, on the whole, a good tale to tell. They should spend more resources on telling it. As any chief executive should realise these days, corporate communication is the task of professionals. It is no longer good enough to have a couple of old brochures floating round on the off-chance that someone might ask for one.

That said, the societies are better in this respect than they were ten years ago.

- AMCOS publishes an interesting occasional newsletter.
- In 1993, APRA began publishing a high quality Year-Book which has numerous articles of interest to the music community.

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

- AVCS publishes a newsletter entitled *Off the Air*. It is circulated free of charge to members, licensees, potential claimants, industry associations and others. It is published irregularly.
- Since 1988 CAL has published an informative newsletter, which is distributed to member licensees and the general public. Since 1991, it has been published bi-annually.
- PPCA does not have a newsletter for those who subscribe to its services. It should.

The newsletter is a valuable tool of communication for societies - both to communicate with members and with the wider community. The more information that is supplied, the fewer complaints there will be about the "Secret Societies".

Attitude to Inquiries And Complaints.

Transparency of operation is essential to the healthy collective administration of rights and this requires that complaints and requests for information be dealt with speedily and without prevarication.

Where complaints made are misconceived, every effort must be made to correct the misconception. This is best done by full and ready disclosure rather by adopting a defensive attitude. Some are working well in this regard; others not.

Procedures Provided To Deal With Inquiries And Complaints

Generally, there was a lack of codified complaint procedures. Complaints in the main were directed to the Chief Executive for resolution.

Submissions to the Inquiry indicated that, in spite of their efforts, this is not necessarily a very effective mechanism - either for the society or the complainant.

There is a need for more formal complaints procedures whereby the handling of complaints is made in more systematic and formally supervised manner. This would also assist the executives to review more efficiently the weaknesses (or the perceived weaknesses) of their organisation.

A Place Of Last Resort

There is a need for an independent body to which persons can go when their communications with the society have been unrewarding.

All of the societies reviewed were concerned that if the Tribunal were to be invested with a jurisdiction which covered licensee applications, inquiries and complaints generally, their time would forever be taken up with minor complaints and administrative matters. Moreover, it is highly doubtful that the Copyright Tribunal itself would wish to become a consumer complaints tribunal.

If the Copyright Tribunal is not the right body to deal with otherwise unresolved issues relating to processes and procedures for dealing with-

- licence applications;
- licensor and licensee inquiries;
- licensor and licensee complaints;

then an appropriate body must be established.

The Report recommends that there be established a position of Ombudsman Of Copyright Collecting Societies. This role may be only part-time and may be best based within the Attorney General's Department. Alternatively, it may be preferable to position it as another arm of the Copyright Tribunal's (expanded) structure.

Certainly it is a role that must be seen to be independent of the societies themselves, so that both rights owners and users are assured of its independent stance.

The proposed Ombudsman's office could provide various resources including not only a facility for independent investigation but also alternate dispute resolution facilities. Where the Ombudsman makes a determination, if there is to be a right of appeal, it should be to the Copyright Tribunal, not the general courts.

As to the cost and funding of the role, separate investigation is required but it seems appropriate that collecting societies contribute to the cost of such function - perhaps in proportion to the number and size of the references which concern them.

Transparency of operation, high quality communication to the relevant community, properly articulated grievance procedures, and an independent office to facilitate the resolution of grievances that can not otherwise be resolved. Simple: a perfect world.