

17.07.2013 – Report to BCC

Principles for Collective Management Organisations' Codes of Conduct

BCC Internal Review of Implementation of Codes by Member CMOs

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the CCIs. Our members also include collecting societies which represent right holders and which enable access to works of creativity.

CMOs participating in this self-regulatory process

BCC Member CMOS:

Artists' Collecting Society (ACS)
Authors' Licensing & Collecting Society (ALCS)
British Equity Collecting Society (BECS)
Copyright Licensing Agency (CLA)
Design & Artists Copyright Society (DACs)
Directors UK
Educational Recording Agency (ERA)
Publishers Licensing Society (PLS)
PPL
PRS for Music (MCPS and PRS)

Other CMOs:-

Christian Copyright Licensing International (CCLI)
Newspaper Licensing Agency (NLA)
Print Music Licensing Limited (PMLL)

Purpose and structure of BCC Review

Under Section 4 of its Policy Framework document ("*Principles for collective management organisations' codes of conduct*", endorsed by the BCC on 23rd May 2012 and available at <http://www.britishcopyright.org/page/276/principles-of-collective-management-organisations-codes-of-conduct/>) the BCC is to review the implementation of its Principles of Good Practice in the form of individual codes of conduct published by CMOs participating in this self-regulatory process. Its purpose is to confirm that each CMO has put in place a code of conduct and that its code is compliant with the standards set out in the Principles. This is an internal review and should not be confused with the Independent Code Review.

A survey of CMOs took place 12 months after the initial adoption of the Principles by the full BCC and was completed with checks on CMO websites carried out in June 2013

The original survey questionnaire was sent to, and completed by, all participating CMOs at that time. Its purpose was to ascertain:

- a. whether each CMO has a code, or where applicable codes, in place;
- b. the extent to which a CMO code has been implemented;

- c. the extent to which a CMO code has been updated;
- d. the extent to which a CMO code complies with the principles and standards set out in the policy framework.

The BCCs Secretariat collated and analysed the information provided by the CMOs for presentation to the Working Party. This information was also shared with other BCC members. No comments were received.

A Working Party made up of the following BCC Members met for the first time on 23rd May 2013:-

Bernie Corbett, General Secretary, Writers Guild of Great Britain
 Maureen Duffy, President of Honour, British Copyright Council
 Kevin Fitzgerald, Chief Executive Officer, Copyright Licensing Agency
 Janet Ibbotson, Chief Executive Officer, British Copyright Council
 Linda Royles, Consultant, British Association of Picture Libraries and Agencies

At its meeting, the Working Party agreed that the original draft Review Report (based on the survey findings) was satisfactory but further checks should be carried out and findings added before it was finalised. To this end, the Group agreed to:-

1. Contact Ombudsman Services to confirm that all CMOs listed had completed the sign up process.
2. Test the websites of each participating CMO to identify whether:-
 - each CMO code(s) had been published;
 - each CMO code(s) was readily accessible on its website;
 and
 - to carry out random tests to see whether aspects of the code(s) as published were compliant with the Principles.

Some members of the Working Party were particularly interested in how codes dealt with complaints procedures for non-member rights holders and, while recognising that tariffs and licensing terms were out side the remit of this review, how complaints procedures dealt with users not licensed by CMOs e.g. prospective licensees. As a result, these were the most frequent checks.

One member of the Working Party carried out some additional tests by telephoning a limited number of CMOs to ascertain staff awareness of codes, signposting and procedures for handling complaints.

This Report combines the Working Party's findings with the original survey results.

Its findings will be presented to the full BCC Membership at its meeting on 17th July 2013.

The results of the BCC review will:-

- Inform any proposals for amendments to the terms of the policy framework, such amendments to be subject to appropriate consultation with relevant stakeholders.
- Be provided to the appointment panel for the Independent Code Reviewer.
- Be made available to the Independent Code Reviewer once appointed.

SURVEY RESPONSES

A total of 13 CMO's responded to the survey. Though not BCC members, CCLI and NLA participated in the BCC code development process and took part in the survey. PMLL did not exist until 2013 so did not participate in the survey.

The survey responses were completed by CEO's, Legal Directors and other Senior Managers of the CMOs concerned.

Figures provided in responses to individual questions below are based on 12 completed responses (i.e. 100%). MCPS and PRS are two CMOs and each is a member of the BCC but they trade together as PRS for Music and are covered by its single set of codes.

1. Does the CMO have a code and if so what is its current status.

11 out of 12 CMOs (83%) had codes as of 30th November 2012.

CCLI did not yet have a code but indicated that it was the early stages of drafting.

Of the remainder:

- 1 CMO had not yet published its adopted code;
- 1 CMO had an approved code but was carrying out an additional compliance review before publication;
- 2 CMOs had codes which were still undergoing consultation;

2. Is the code member or user facing

11 CMOs replied to this question.

- 4 CMOs had codes for members and users.
- 1 other CMO had a member facing code but was developing a user facing code for publication in 2013;
- 4 CMOs had member facing codes, one of which pointed out that it did not have "members" as such but had a code for "mandating publishers";
- 2 CMOs had user facing codes.

3. Did CMOs with codes already in place need to update them to make them compliant with the BCC's principles and if so is the update complete

There were 4 CMOs with codes already in place, 2 of which did not need updating to bring them into line with the BCC's. Where it was needed, work on updating had been completed.

4. In the view of the CMO, is its code compliant with the BCCs Principles

10 CMOs said that, in their view, their published code was compliant with the BCC's Principles.

1 CMO qualified its response by stating that its intentions were that its (early draft) code would be compliant with the BCC's Principles.

1 CMO failed to reply to this question.

OMBUDSMAN SERVICES

"provides dispute resolution for the communications, energy, property and copyright licensing industries".

Section 3 of the BCC's Policy Framework includes a description of the ways in which a member or licensee can express their dissatisfaction with a CMO (including its formal complaints procedure). When internal processes and appeals are exhausted the complainant should be offered access to an "independent complaints review mechanism" by the CMO, at no charge to the complainant.

Following an introduction from PRS for Music which was already using the service, Ombudsman Services Limited agreed to expand its Copyright Licensing operation and

all CMOs involved in the process were encouraged by the BCC to sign up to it. A description of its Copyright Licensing service can be found at www.ombudsman-services.org.

At 24th May 2013, the Ombudsman for Copyright Licensing confirmed in writing that 9 CMOs had joined PRS for Music in subscribing to its service. 1 new CMO (BCC non-member) was in the process of joining. 1 CMO (BCC member) believes that it is exempt (see below). 1 CMO (BCC non-member) planned to join Ombudsman Services once its code was in place.

A member of the BCC Review Working Party also carried out a review of the Ombudsman Services website. He view is that the information on Copyright Licensing is accessible and its quality is good. A couple of minor suggestions were proposed and these have been forwarded to the Ombudsman for consideration.

WEBSITE TESTING

14 CMO websites were reviewed including the three non-BCC members: CCLI, NLA and PMLL.

1. Is the code published on the CMO's website

11 CMOs had published their Codes. 3 did not have Codes available. 1, as a micro-business considers itself exempt from the need to introduce a code. 1 intends to publish its Code once it has been finalised. 1 further CMO was found to have a consultation draft on its website but no final published version can be found on the site.

2. Is the code accessible on the CMO's website

11 CMO Codes were accessed through their websites.

The level of accessibility varied. 3 can be accessed through links on their Home pages. The remainder are located at various places on the CMOs website. In some cases this was probably due to limitations on the structure of the site, for example, where an existing "Governance" menu heading has the strongest relationship with the CMOs code.

Of the 11 codes accessible to the Reviewers, 5 were felt to have good accessibility, 1 was moderately accessible and 2 had poor accessibility. Each CMO has been sent a copy of the report with an explanation of any difficulties encountered by the Reviewer.

4. Is the code compliant with the Principles

This was more problematic for the volunteers carrying out the BCC Review to ascertain in any detail. Detailed checks are more truly the function of the Independent Code Reviewer. In addition, direct comparison between CMOs is difficult particularly when Codes face different stakeholders e.g. rights holders, members, users and where rights managed and mandates differ enormously between CMOs.

Most Codes were clearly written with simple to understand introductory sections and most include contents lists, though reviewers felt it would be helpful if headers could allow for a click through to the relevant section. Many of the Codes cover what is and is not covered by the CMOs complaints procedure. Most include references to distribution policies and other internal but public documentation and where it can be located. Again live links to these should be included.

Where an introductory section on the website links through to the full code, a statement about the CMOs intentions or any "promises" to its customers/rights holders were felt to provide a more positive experience. Two examples:-

CMO A: committed to reviewing its own Code regularly as well as indicating a

willingness to update in line with any review of the BCCs Principles and it also made wider reference to the Independent Code Review, self-regulation and possible policy developments at UK and EU level;

CMO B: committed to a policy that “was to be fair and equitable in all its dealings with rights owners and with users”;

Complaints procedures were clear in most cases, including reference to the external complaints mechanism with explanations that it was available at no charge to the complainant once internal mechanisms had failed, though in some cases the procedure was at the bottom of an otherwise lengthy document.

In two cases the code was felt to be too long. In one of these it was said to be a daunting document with confusing cross references.

One CMO was commended for including a link from its FAQ section on “How do I complain?” However, the same CMO referred to suspension of payment of fees due for the duration of the complaints process. Presumably there was a reason for this but as a general statement it seemed, to the review team member, a clear disincentive to pursue a complaint.

3. Recommendations

The following were noted:-

- a) CMOs should try to ensure that codes are accessible from their home page and, if placed elsewhere on the site, consideration should be given to their accessibility by those unfamiliar with CMO operations and structure;
- b) Once the code is reached the CMO should, if possible include a short introductory explanation incorporating any positive commitments to stakeholders;
- c) Links to other relevant documentation e.g. distribution policies should be incorporated into the Code;
- d) Links from the contents list to relevant sections of the code, particularly complaints procedures, should be introduced;
- e) A live link to Ombudsman Services should be included;
- f) CMOs should review their websites to reduce confusion and contradiction between documents e.g. draft/consultation copies and final versions of codes or even member charters;
- g) Related literature should be updated so it cross references to its more recently introduced code;
- h) CMOs with references to Codes in their “News” sections should be aware that the item will drop from the list over a period of time and should, therefore, ensure that the Code features prominently elsewhere;
- i) CMOs with FAQ sections should consider including “How to complain” questions with links to codes and any complaints procedure;
- j) Where a CMO considers itself to be exempt from the need for a code then its website should explain its position and indicate whether it supports the Principles.

TELEPHONE CHECKS

At an early stage in discussions between CMOs, it was pointed out that codes alone are not enough, almost as important were proper procedures for handling complaints, customer service standards and staff awareness and training in those procedures and standards.

While testing websites for the BCC Review, one of the review team felt it would be helpful contact some CMOs by telephone to ask about their complaints procedures and codes, from the point of view of a prospective complainant.

While reception staff at all three CMOs were co-operative and helpful, in two cases they seemed unfamiliar with the layout of their websites and the whereabouts on those sites of complaints procedures and codes, though they did manage to locate them in. They were also unsure about complaints handling, in one case passing the caller to the Communications Department who were equally unsure but recommended writing to the Chief Executive. In the third case (a small CMO), the staff member handling complaints was unavailable but the receptionist found the code and offered to forward a copy to the caller.

It is recommended that CMOs review staff training and awareness of procedures for dealing with complaints and for processing different types of complaints, an awareness of its code and obligations under that code as well as the regulatory (and self-regulatory) context in which the code has been developed.