

## EXPLANATORY MEMORANDUM ACCOMPANYING COLLECTING SOCIETIES' CODE OF CONDUCT

The heading to clause 3 of the Code is "COMPLAINTS AND DISPUTES"

In the various paragraphs of clause 3, both expressions, "Complaints" and Disputes" are used, sometimes separately and at other times in association with one another.

Clause 3(a) obliges each collecting society to develop and publicise procedures for:

- (i) Dealing with complaints from Members and Licensees; and
- (ii) Resolving disputes between the Collecting Society and:
  - A its Members and/or
  - B its Licensees.

Clause 5.1 (c) sets out the functions of the Code Reviewer. These include:

- (i) to monitor, and prepare annual reports on, the level of compliance by Collecting Societies with the obligations imposed on them by the Code; and
- (ii) as part of that function to consider complaints from Members or Licensees.

Finally, paragraphs (c) to (e) of clause 5.2 deals with the reception of complaints by the Code Reviewer.

In summary, it is only "complaints" and not "disputes" that the Code Reviewer is to receive and deal with under clause 5.2.

The expressions "complaint" and "dispute" are not defined in the Code.

In his Report of his review of the operation of the Code issued in April 2014 the Code Reviewer suggested that the following definitions might be considered appropriate:

**"complaint"** means "an allegation that a collecting society's conduct has fallen short of a standard of conduct required of it by the Code"

**"dispute"** means "the taking of rival positions by a collecting society on the one hand and a member, licensee or other person on the other hand, as to their respective legal rights and obligations, resolution of which depends on a determination of what the relevant law is and/or a finding as to what the relevant facts are".

For example, an issue as to whether a licensee owes an amount of money to a collecting society is a dispute, whereas an allegation that the collecting society has not responded within a reasonable time to correspondence from the licensee or has been rude in dealing with the licensee over the dispute is a complaint.

Readers should understand that it is part of the role of the Code Reviewer to address complaints by them about the conduct of a collecting society but not to resolve disputes between them and the collecting society.