



**Australia Council for the Arts comments on *Copyright Amendment (Disability and Other Measures) Bill* exposure draft**

**February 2016**

## About the Australia Council for the Arts

The Australia Council is the Australian Government's arts funding and advisory body. The Council's purpose is to champion and invest in Australian arts, by supporting excellence across all art forms and leveraging investment to support and build a vibrant arts sector. The Australia Council is a national advocate for the arts and works to increase national and international access to Australian arts and culture.

The Australia Council was established as a Commonwealth statutory authority in 1975, and its functions were updated under the *Australia Council Act 2013*. The Council's functions are to:

- (a) support Australian arts practice that is recognised for excellence;
- (b) foster excellence in Australian arts practice by supporting a diverse range of activities;
- (ba) support Aboriginal and Torres Strait Islander arts practice;
- (bb) support Australian arts practice that reflects the diversity of Australia;
- (bc) uphold and promote freedom of expression in the arts;
- (bd) promote community participation in the arts;
- (c) recognise and reward significant contributions made by artists and other persons to the arts in Australia;
- (d) promote the appreciation, knowledge and understanding of the arts;
- (e) support and promote the development of markets and audiences for the arts;
- (f) provide information and advice to the Commonwealth Government on matters connected with the arts or the performance of the Council's functions;
- (g) conduct and commission research into, and publish information about, the arts;
- (h) evaluate, and publish information about, the impact of the support the Council provides;
- (i) undertake any other function conferred on it by the Act or any other law of the Commonwealth;
- (j) do anything incidental or conducive to the performance of any of the above functions.

The Australia Council is a Corporate Commonwealth entity under the *Public Governance Performance and Accountability Act 2013*.

The Australia Council's Strategic Plan 2014-19, *A Culturally Ambitious Nation*, guides the work of Council, including the four strategic goals:

- Australian arts are without borders
- Australia is known for its great art and artists
- The arts enrich daily life for all
- Australians cherish Aboriginal and Torres Strait Islander arts and cultures.

## Introduction

The Australia Council is the Australian Government's arts funding and advisory body, and has an important role in supporting and promoting the work of Australia's arts sector. This includes considering and responding to issues and opportunities that affect the income and careers of artists, including the copyright and intellectual property framework.

The Australia Council has discussed copyright previously in submissions to the Australian Law Reform Commission (ALRC) 2012 Issues Paper and 2013 Discussion Paper on Copyright and the Digital Economy and to the Productivity Commission's current Inquiry into Intellectual Property Arrangements. This submission draws on some key points from that work, and we refer to those attached submissions for further detail.

We note that some of the Australia Council's key stakeholders have provided comprehensive comments on the exposure draft of the *Copyright Amendment (Disability and Other Measures) Bill* (the Copyright Amendment Bill), including the Australian Copyright Council and the Copyright Agency|Viscopy.

## Accessibility and Copyright

The Australia Council acknowledges the importance of accessibility and consideration of disability access measures in the context of the *Copyright Act 1968* (the Copyright Act). Many of our stakeholders are directly impacted by the availability of material in an accessible format and amendments in this area will be welcomed.

The Australia Council recommends that the definition of "person with a disability" in the Copyright Amendment Bill be updated to reflect current understanding of disability, in line with the United Nations Convention on the Rights of Persons with Disabilities. This would require shifting from a definition that reflects a medical model of disability to a definition reflecting the social model of disability.

When using the term 'person with disability' in the context of the social model, the word 'disability' means someone has been disabled by barriers or discrimination, rather than by their impairments.

In applying the social model of disability to the definition in the exposure draft of the Copyright Amendment Bill, this would require shifting the emphasis from impairment being the reason for a person to have difficulty reading, viewing or hearing copyright material. Rather, it would acknowledge that a person may require access in a particular format to read, view or hear copyright material.

To be consistent with a social model of disability, other wording in the Copyright Amendment Bill would also need to be updated through a shift from terms such as "assisting" people with disability, to "providing access" to people with disability.

The Australia Council supports amendments that allow accessible format versions for people with disability. In introducing such amendments, it is important that the principle of artists'

rights to their copyright material is maintained, and that content creators continue to receive payment for the use of their work.

Copyright is a key source of income for creators working across a range of art forms, particularly in music and literature. For example, income from copyright represents approximately a fifth of the creative income for writers, who are some of the lowest paid artists in Australia.<sup>1</sup> In 2009 it was estimated there were approximately 44,000 professional practicing artists in Australia, and this number has remained relatively stable.<sup>2</sup> The median income from their creative practice varies between \$7,000 and \$22,500 per annum depending on the amount of time they can dedicate to their practice.<sup>3</sup>

The Australia Council welcomes changes that will allow greater access to the work of Australia's artists by people with disability, along with a commitment to artists' rights to their copyright material and payment for use of this material.

## Copyright and Preservation

The Australia Council is bound by the *Archives Act 1983* and its own legislation to archive, maintain and preserve collections of arts records and materials submitted to or created by it. The Council's arts records are available to the public, for example, through freedom of information processes and reasonable requests from the public.

The Australia Council could therefore be encompassed in the meaning of a "key cultural institution" in the exposure draft of the Copyright Amendment Bill.

The proposed amendments aim to allow flexibility in copying material for the purpose of preservation. The Council supports this proposal as it will enable digitisation of current records more readily.

Alternatively, if the Australia Council is not viewed as a key cultural institution within the Copyright Amendment Bill, it should be confirmed that certain institutions with records that are not directly open to the public, either prescribed or not, will be able to rely upon the preservation copying amendments.

It would be beneficial to the Australia Council's delivery of its functions to preserve and maintain records, if the exceptions proposed were instituted. The provisions are supported on the basis that the copies will be made with sufficient limitations that protect original copyright holder.

## Educational Measures

Artists and stakeholders supported by the Australia Council could be disadvantaged by the introduction of the education measures proposed in the exposure draft of the Copyright

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<sup>1</sup> Throsby D and Zednik A (2010), *Do you really expect to get paid? – An economic study of professional artists in Australia*.

<sup>2</sup> Australia Council (2015), *Arts Nation: An Overview of Australian Arts*, 17.

<sup>3</sup> Australia Council, *Arts Nation*, 17.

Amendment Bill. The provisions appear to allow copying of material, with some limitations, on a scale that would impact the income and integrity of artists' work.

This is particularly the case regarding broadcasting of material, including performances and sound broadcast. We recommend that the provisions be clarified so that the licensing scheme sufficiently addresses performers' rights.

As noted above, the principle of maintaining artists' rights to their copyright material and ensuring they are recompensed for their work is paramount. This provides artists with access to a sustainable income that allows them to continue creating new content for the benefit of the Australian community.

The Australia Council acknowledges that some educational institutions captured by the provisions may be related to the arts. The Australia Council therefore supports provisions allowing copying of material for the purpose of online exams, provided that relevant licence fees would be paid to artists per the current scheme.

The proposed education measures may also have implications for Indigenous Cultural and Intellectual Property (ICIP) if the arts and cultures of Aboriginal and Torres Strait Islander artists or communities were to be used for education purposes. The Australia Council has discussed issues relating to the protection of ICIP in submissions to the Productivity Commission's Inquiry into Intellectual Property Arrangements, and the ALRC's Discussion Paper on Copyright and the Digital Economy.

Indigenous artists and their communities have particular needs in relation to ICIP, and it is important that Indigenous cultural protocols are upheld when their cultural material is accessed to ensure integrity, attribution and respect of Aboriginal and Torres Strait Islander arts and cultures.

The Australia Council has published free protocol guides for working with Indigenous Australian artists, including for Indigenous Australian music, writing, visual arts, media and performing arts. The protocols advocate for prior informed consent for use of ICIP and are a leading model for promoting ICIP by outlining appropriate ways of using Indigenous cultural material and engaging with Indigenous artists and communities.<sup>4</sup>

## Safe harbour

The Australia Council views the expansion of the safe harbour definition with concern, as the arts sector would be impacted by an expansion of safe harbour provisions. Such changes would allow for unfettered use of artists' material that is available in sharing formats, and would protect corporations that provide access to the material. Artists and arts organisations would have little recourse to pursue individuals for unauthorised use of their materials. Alternatively, they would have greater chance of seeking remedy for unauthorised use from service providers and corporations who provide easily downloadable content.

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<sup>4</sup> The Australia Council's protocol guides for working with Indigenous Australian artists are available at the following link: <http://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>