

3 July 2018

The Copyright Law and Policy Section  
Content and Copyright Branch  
Department of Communications and the Arts

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Thank you for writing on 19 March 2018 seeking this organisation's views on three areas of Australia's copyright laws that the Productivity Commission Report identified would benefit from modernisation:

- *Flexible exceptions* – which need to adapt over time to provide access to copyright material in special cases as they emerge;
- *Contracting out of exceptions* – which can reduce access to copyright material for users; and
- *Access to orphan works* – which exist when copyright owners can't be found and users lose access to copyright materials.

Before providing brief comments in response, I will outline who we are and what we do, and stress the importance of the cultural sector to Australia and the ways in which it contributes to social and economic wellbeing. I would also note that MGA supports the submission by the Copyright in Cultural Institutions (CICI) group.

### Who we are

Museums Galleries Australia (MGA) is the national membership association and peak advocacy body representing museums and galleries. We encompass a wide and diverse range of national, state, regional and community museums, art galleries, historic sites, botanic and zoological gardens, research centres, Indigenous cultural centres, and Keeping Places across Australia. All our members are, however, linked by a shared dedication to culture and the communities they serve. They understand that Australian cultural life is a dynamic ecosystem that generates creativity and innovation and contributes to the social and economic wellbeing of the country. Attachment 1 provides a short profile of the organisation and a snapshot of the diverse range of member institutions.

### The cultural sector

The cultural sector is the parallel source of knowledge to the formal education system and museums and galleries, as core parts of this sector, are fundamental sources of information, learning and engagement for people of all ages. These institutions encourage curiosity, creativity and critical thinking, offer rich aesthetic and emotional experiences through art, science, history and story-telling, and enable people to access objects and collections in ways that enrich lives and society. Furthermore, they help foster the creative industries which are one of the engine houses of the economy.

### Definition

We define "museum" (recognising that museums of science, history and art may be designated by many other names, including gallery and Keeping Place) as an organisation with the following characteristics: *A museum helps people understand the world by using objects and ideas to interpret the past and present and explore the future. A museum preserves and researches collections, and makes objects and information accessible in actual and virtual environments. Museums are established in the public interest as permanent, not-for-profit organisations that contribute long term value to communities.*

Museums and galleries are hugely trusted institutions in civil society. Research by the American Alliance of Museums (Washington) finds that:

*Museums are considered the most trustworthy source of information in America, rated higher than local papers, non-profits researchers, the U.S. government, or academic researchers.*

In Australia, research carried out by independent market research company IPSOS for the Museum of Australian Democracy at Old Parliament House, Canberra, reveals that museums are very high on the list of institutions that are trusted by Australians.

## **Challenges**

We live in a rapidly changing environment: a world of immense social, environmental, economic and technological change. This is especially pertinent for our galleries and museums and how they serve their communities and the nation. A range of museum and gallery-led audience research is revealing changing contexts, behaviours and expectations. Better access and engagement is increasingly regarded as core business by all cultural institutions. This encompasses both physical and on-line access.

On-line access to collections has been growing steadily over the last decade, as an integral part of each institution's mandate for accessibility. The acquisition and management of digital collections and enabling digital access to both born-digital and digitised material have become very much part of the mainstream activities of the institutions rather than separate streams.

These challenges and changes to core museum business have increased the importance of modernising copyright legislation while continuing to recognise the rights of content creators.

## **Response to specific questions on copyright law reform**

### *1. Flexible exceptions*

MGA supports the introduction of an additional, legislated, fair dealing exception for use by cultural institutions.

The current gap limits the ability of publicly funded cultural institutions to carry out their legislated responsibilities. A fair dealing exception could be based on the public good/public value nature of the institution and the social/cultural purpose to which the use of the material would be put.

### *2. Contracting out of exceptions*

Cultural institutions should be able to rely on a clear updated Copyright Act without worrying about the potential for transgression under separate contractual obligations. Many institutions are currently hamstrung by the sheer number of licenses attached to items in a particular collection, especially audio-visual collections.

The Copyright Act should be amended to make it clear that an agreement that purports to exclude a cultural institution's ability to rely on a copyright exception, will be unenforceable against that institution.

### *3. Access to orphan works*

MGA supports a combination of introducing a statutory exception specifically for cultural and education institutions' use of orphan works (particularly for non-commercial uses) as well as a limitation on remedies, for commercial use of orphan works.

Museums and galleries have both a legislative and social obligation to share and make accessible the material and information in their care and need flexibility within the Copyright Act to do so. A large proportion of museum collections is estimated to be orphan works, of little or no commercial value,

which under current circumstances are not readily available to the public. This is a significant issue, in particular, for small museums.

The current system of reliance on risk management is highly unsatisfactory and favours the locking up of culturally significant material that could probably be made available to no-one's detriment. Therefore, MGA supports a separate approach for collecting and cultural institutions through the introduction of a specific direct exception for their use of orphan works.

In conclusion, MGA looks forward to further participation in the successful modernisation of copyright law, which both supports the rights of creators and enables cultural and collecting organisations to fulfil their obligations to the public in a world of rapidly changing expectations and opportunities.

Yours sincerely

A handwritten signature in cursive script that reads "Alex Marsden".

Alex Marsden  
National Director

Attachment 1: Profile of Museums Galleries Australia