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The Director,
Copyright Law Section
Department of
Communications and
the Arts
Submitted online

SUBMISSION: COPYRIGHT MODERNISATION CONSULTATION

NAVA welcomes the opportunity to contribute to this consultation.

Fifty years have passed since the Copyright Act was implemented. During this time, digital and social media have changed public, commercial and government expectations on what kinds of creative work should be able to be accessed for free or manipulated into unauthorised uses. These changing expectations are not a justification for *weakening* laws that protect artists' rights; rather, they signal the need to *strengthen* those laws, as well as better educating the public, the corporate sector and all levels of government that **artists own the rights to their own work** and that **free is not fair**.

The National Association for the Visual Arts is the peak body representing the professional interests of the visual and media arts, craft and design sector, comprising over 20,000 practitioners, galleries and other art organisations. Since 1983, NAVA has been influential in bringing about policy and legislative change to encourage the development of the sector and to increase professionalism within the industry. NAVA sets industry standards through the Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector. We are champions of artists' rights and in 1995 led the establishment of Viscopy, Australia's visual arts copyright collecting agency, now part of Copyright Agency.

On a daily basis, NAVA supports artists whose moral rights, intellectual property and/or copyright are being infringed. We regularly mediate on behalf of artists, as well as referring them to the Arts Law Centre of Australia. Recent high profile cases have included:

- The work of Ballarat based Indigenous arts collective the Pitcha Makin Fellas was reused without permission nor compensation by the AFL, in a case that made news all over Australia;
- An artist's work was repurposed by a major state gallery and reworked into a workshop program that then toured that state's regions, without permission, attribution nor compensation;
- An Indigenous artist's work was appropriated by a major Australian airline without permission, attribution nor compensation.

The recent Australia Council economic study of professional artists in Australia, *Making Art Work*, found that while a quarter of artists experience copyright infringement, only some 40% of those artists take action, with some 60% of those actions being successful, meaning that “the majority of those suffering infringement finish up with no redress.”¹ Of artists whose rights were infringed:

- 56% of visual artists and 89% of craft practitioners had their work repurposed without attribution;
- 48% and 54% respectively had work repurposed without permission;
- These were among the higher rates of rights infringement in comparison to practitioners of other artforms.²

Among visual artists, with thanks to NAVA and Viscopy and the Copyright Agency, 72% of copyright infringement actions are successful and only 25% unsuccessful.³ These better outcomes for visual artists reflect the sustained work of industry service and rights organisations in publicly advocating for artists’ rights, educating artists on their rights, and supporting them to defend those rights.

In its companion document responding to the findings, the Australia Council notes that as communications technologies have evolved, “increased audience expectations for free content, and opportunities for misappropriation and unauthorised exploitation, [pose] significant challenges to artists’ rights and livelihoods.”⁴ To see a change in Australia’s copyright laws that shifted even more of the burden onto artists would be detrimental to Australian creativity and innovation, as well as damaging to the careers of tens of thousands of artists.

NAVA’s submission to the 2017 Productivity Commission Inquiry into Intellectual Property Arrangements emphasised:

- That while the fair dealing framework can be improved, a “fair use” approach facilitates the exploitation of artists and their work and is both unnecessary and unconscionable;
- Copyright, and not only moral rights, should be recognised to subsist in works of visual and media art, craft and design, regardless of whether those works are registered designs, bringing their status in harmony with written works;
- A principle of policy coherence and consistency should apply across relevant areas of government policy, recognising that detrimental changes to Australia’s copyright laws risk triggering detrimental

¹ David Throsby and Katya Petetskaya (2017) *Making Art Work: An Economic Study of Professional Artists in Australia* Department of Economics Macquarie University p 105

² *Making Art Work* p 107

³ *Making Art Work* p 106 (outcomes for the remaining 3% remained unknown at the time of the study)

⁴ Australia Council for the Arts (2017) *Making Art Work: A summary and response by the Australia Council for the Arts* p 5

unintended consequences across policy areas in education, innovation, and workforce for the new economy.

NAVA is an affiliate of the Australian Copyright Council and we endorse their submission to this Inquiry. In particular we note:

- Artists and other creators rely on copyright laws to secure the incomes that sustain innovative, impactful careers, as well as securing control over the contexts in which their work can be used, presented or manipulated;
- The introduction of so called “fair use” is not fair as it creates unnecessary burdens on artists to undertake the role of government in monitoring and litigating breaches of their rights;
- Appropriate uses of copyright works by government bodies, libraries, archives and educational institutions is already adequately permitted within current laws, while further improvements are possible within current frameworks;
- Weakening how quotations of works may be used introduces unnecessary unfairness, especially where the use or manipulation of an entire work might possibly be interpreted as quotation;
- Contracting out must preserve the right of the artist to control the contexts in which their work can be used;
- Works that are presented online without appropriate attribution and without the consent of the artist should not be interpreted as orphaned as the default assumption;
- As technologies evolve and content sharing is further facilitated, appropriate attribution of the creator of a work must remain a requirement and indeed, governments should see themselves as champions of the public recognition of artists.

Ongoing technological evolution is not a reason for abandoning our responsibility to ensure that artists’ rights are respected. Nor is the increasing consumer expectation of free access to copyright works a reason for abandoning artists’ rights over their work. On the contrary, technology offers us new and efficient ways to protect and promote those rights more effectively.

NAVA does not support the weakening of Australia’s copyright laws.

Please do not hesitate to contact me for any further information I can provide.

Sincerely,



Esther Anatolitis

Executive Director