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***Response to Report of the Contemporary
Visual Arts and Craft Inquiry***

June 2003

Australian Copyright Council

1. The Australian Copyright Council is a non profit company. It receives substantial funding from the Australia Council, the Federal Government's arts funding and advisory body. The Copyright Council provides information about copyright via its publications, training and website, provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policies and legislation.
2. The Australian Copyright Council made a submission to the Contemporary Visual Arts and Craft Inquiry. Some of the organisations affiliated with the Australian Copyright Council also made submissions to the Inquiry.
3. In this submission, we respond to the recommendations from the Inquiry which relate to copyright. We have set out each of those recommendations, followed by our response.

Recommendation 3

To protect the rights of visual artists and craft practitioners, the Inquiry recommends that the relevant Commonwealth government departments take action in relation to the copyright issues identified by the Inquiry in its findings, including:

3.1 commencing consultations in preparation for the review of the Digital Agenda

The Commonwealth Government has recently appointed an external consultant, Phillips Fox Solicitors, to conduct a review of the Digital Agenda Act amendments to the Copyright Act. We support the review, and we do not object to the Government engaging a consultant to conduct research or provide expert advice, but we do have concerns about the Government engaging a consultant to make recommendations about law reform.

The Government has indicated that there will be a further process following its receipt of the consultant's report, but it has not stated what that process will be. We submit that the Government should give details now about the entire process of the review.

3.2 considering amendments to deem artists to have asserted their moral rights;

We do not think the proposed amendments would address the concerns discussed on page 144 of the Committee's report. A provision in the Australian Copyright Act deeming the right of attribution to be asserted will only have effect in Australia, where it is not necessary. It will not alleviate the requirement to assert the right in territories where that is required (principally the United Kingdom and New Zealand). The problem may be better addressed by better education about the requirements of the Australian legislation, and about the need to be careful of jurisdictional differences.

A more beneficial amendment may be one deeming a purported waiver of moral rights in a contract to be ineffective. As noted in the Committee's report (page 137), it

appears that a creator may give a contractual undertaking not to exercise his or her moral rights under any circumstance, despite the Government's intention that waiver of moral rights not be allowed.

3.3 conducting an independent review of the impact of extending the term of copyright;

We support this recommendation, and note that extension of the term of copyright under Australian copyright law has been sought by the United States in connection with the proposed free trade agreement between the United States and Australia. An extension of the term of copyright was included in the recently concluded free trade agreement between the United States and Singapore.

3.4 extending the duration of copyright in photographs to match other copyright media;

We note the Government's commitment in its 2001 pre-election policies to extend the period of protection for photographs in accordance with the requirements of the World Intellectual Property Organization Copyright Treaty. We have supported the extension and understand that legislation to give effect to this commitment is currently being drafted.

3.5 considering the viability and implications of repealing provisions dealing with copyright in sculptures and craft works on public display;

We support the repeal of sections 65 and 68, which allows two-dimensional reproductions and filming of sculptures and works of artistic craftsmanship, and subsequent uses (including commercial uses) of those reproductions and films. The provisions deprive artists of income they may otherwise receive. As a result, they are likely to be contrary to Australia's international obligations under the Berne Convention and the TRIPS Agreement regarding copyright exceptions.

We submit that it is reasonable to require copyright clearances for these reproductions, and note that getting copyright clearances has become much easier as a result of developments in technology and collective licensing.

3.6 examining the costs and benefits of providing a guaranteed distribution of income from statutory licences to artists;

We support such an examination, and advise that we are planning to conduct some research on this and related issues later this year.

3.7 commencing consultations regarding a national education campaign to raise the awareness of copyright creators and users; and

We support this recommendation, and note a similar recommendation by the House of Representatives Legal and Constitutional Affairs Committee in its report *Cracking Down on Copycats*. We would be happy to be involved in such consultations, having regard to our education activities.

3.8 monitoring the practical application and case law developments with respect to the following copyright provisions

- *definition of artistic work;*
- *moral rights;*
- *fair dealing exemptions; and*
- *exemption permitting artistic works to be incidentally reproduced in film and television broadcasts*

We support this recommendation, and would be happy to assist by providing the results of our own monitoring of these issues – for example, we maintain a database of cases, articles and developments relating to copyright in Australia and overseas. We also note our position that the exception relating to use of artistic works in broadcasts should be repealed.

Recommendation 4

To protect the rights of Indigenous people, the Inquiry recommends that the relevant Commonwealth government departments take action in relation to the Indigenous copyright and Indigenous intellectual property issues identified by the Inquiry in its findings, including:

- *the extension of moral rights to Indigenous groups;*

We support this recommendation, and note the Government's recent announcement that it will be introducing legislation to grant moral rights for indigenous communities.

Recommendation 5

To further protect the rights of visual artists and craft practitioners, the Inquiry recommends the Commonwealth Government:

5.1 Introduce a resale royalty arrangement.

We support this recommendation.

5.2 Establish a working group, comprising representatives from government and the visual arts and craft sector, to analyse the options for introducing a resale royalty arrangement.

We support this recommendation.

5.3 Conduct a tender to determine an appropriate body to administer the resale royalty arrangement

We note that for other statutory licence schemes in Copyright Act, organisations seeking to administer the schemes apply to the Attorney-General to be declared an authorised collecting society, and that this may be a more appropriate mechanism for a resale right scheme.

5.4 Allocate \$250 000 for the development of an implementation strategy.

We support this recommendation.

Government copyright

We note the Committee's discussion (at pages 135 to 136 of its report) of the provisions in the Copyright Act which vest first ownership of copyright in the Commonwealth

and State Governments, where material is made, or first published, by or under the direction or control of the Commonwealth or a State Government. We confirm our position, set out in our response to the Government's response to the Intellectual Property and Competition Review Committee, that the government ownership provisions are inequitable and unjustifiable, and should be repealed.

Libby Baulch
Executive Officer
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