

Article for *Copyright World*

VISCOPY reaches agreements with auction houses; parallel importation

Ian McDonald, Australian Copyright Council, 18 March 2002

VISCOPY reaches agreement with auction houses

A licensing agreement is now available from VISCOPY, the Australian visual arts copyright collecting society, to use reproductions of images of artistic works in auction catalogues and print and Internet advertising. (Under Australian copyright law, such reproductions are not covered by any exception.)

The licence is the results of discussions and negotiations between VISCOPY and the Australian Copyright Liaison Group (a collective of major Australian auction houses). The agreement grants participating auction houses a licence, dating from 1 January 2001, for an initial two year period which may then be renewed for a further period of two years.

We understand that the basic licence rates under the agreement relate to print reproduction, but that images may be reproduced on and communicated to the public from auction house websites (for example, in on-line sale catalogues) for an additional fee based on a percentage of the basic rate. While the rate or rates to be paid by auction houses under the agreement remains commercial-in-confidence, a newspaper report has stated that the rates range from \$50 for one-eighth of a page for works estimated to fetch up to \$2000, to \$187 for a full-page illustration of higher-priced pictures: see "Agreement reached on copyright cost", *The Age*, "The Culture" section, 7 March 2002 at 4; available via www.theage.com.au.

We also understand that the agreement notes which artists must be consulted in each case before an image may be reproduced, and raises issues such as the cultural integrity of works by Australian Aboriginal or Torres Strait Islander artists, and also states that cultural protocols may apply in relation to such works.

The agreement which VISCOPY has with its own members has been amended to give members the ability to decide whether they will appoint VISCOPY to negotiate on their behalf in relation to reproduction and communication of images of their work by auction houses, or retain those rights themselves. Some artists who are still painting, or who still own substantial numbers of their own works, see it in their interests to grant free permissions to auction houses so as to encourage the use of images of their works in catalogues. (Strong sales in the auction market can then underpin strong prices for new or fresh work.) Other artists, however, have noted that the agreement will return money to artists and their families who would not otherwise be benefitted either directly or indirectly by sales of works which have passed out of their hands.

We understand that individual licensing agreements in accordance with the agreement reached by VISCOPY and the Australian Copyright Liaison Group have already been concluded or are about to be concluded with each of the major Australian auction houses.

Parallel Importation

The Copyright Amendment (Parallel Importation) Bill 2002 was introduced into the House of Representatives on 13 March 2002 by the government. Apart from a few minor drafting changes, this Bill is the same as the Copyright Amendment (Parallel Importation) Bill 2001, which passed the House of Representatives last year, but then lapsed in the Senate when the federal election was called for 10 November 2001. If passed, the Bill would remove restrictions on the importation of legitimate copies of computer software, books, periodicals and sheet music.

Given that the government has a majority in the House of Representatives, the Bill is likely to pass the House. However, its fate in the Senate is uncertain, given that the government does not have a majority in the Senate, and given that the previous Bill was heavily criticised by the non-government members of a Senate Committee which reported on the Bill.

For more information, see the earlier Australian news items in issues 110 and 111 of *Copyright World*.

The Bill is available at scaleplus.law.gov.au/html/bills/0/2002/0/20020313copy.htm; the Explanatory Memorandum is available at scaleplus.law.gov.au/html/ems/0/2002/0/20020313copyem.htm.