



Article for *Copyright World*

Report of the Contemporary Visual Arts and Craft Inquiry

Ian McDonald, Australian Copyright Council, 12 September 2002

The Federal Government has released the report of the Contemporary Visual Arts and Crafts Inquiry ("the Myer Inquiry"). The wide-ranging Inquiry included consideration of copyright and moral rights issues relevant to the visual arts and to craft.

A resale royalty "arrangement"

The Myer Inquiry has recommended that the Government introduce a resale royalty "arrangement" for visual artists and craft practitioners. It has also recommended that a tender be conducted to determine an appropriate body to administer the arrangement, and that the Government allocate \$250 000 for the development of an implementation strategy.

The Inquiry's Report notes that the introduction of a resale royalty would provide a substantial benefit to the visual arts and craft sector. Estimates provided in the Report indicate that, on 1999-2000 sales within Australia alone, at a rate of 5%, some \$AU6.75 million might be realised. In addition, resale royalties would be payable under reciprocal arrangements with other jurisdictions, such as the European Union.

The Inquiry does not believe that the introduction of the royalty would have any appreciable impact on markets.

Indigenous cultural and intellectual property

The Myer Inquiry has made a number of findings relating to the problems faced by Indigenous communities in protecting their cultural and intellectual property. For example, it has stated that the current moral rights regime does not provide adequate protection for Indigenous visual arts and craft practitioners, given the social, economic and community responsibilities that such people may have under Indigenous customary law. It has consequently recommended that moral rights be extended to Indigenous groups (that is, beyond the current application to individual creators only).

The Inquiry has also recommended that:

- in any future review of the term of copyright, detailed consideration be given to the needs and experiences of visual artists and craft practitioners, given that

Indigenous communities assert cultural rights to artistic material in perpetuity, while copyright protection only lasts a limited period of time;

- the unauthorised importation of objects which contain Indigenous designs or imagery should be discussed in the context of any future review of customs law; and
- the needs of Indigenous communities, including the design of consultative and culturally-sensitive decision-making processes be considered in any future review of Commonwealth and State cultural heritage legislation.

Other recommendations and comments

The Myer Inquiry has made a number of miscellaneous recommendations, including that:

- a public education program be launched, to promote the benefits and obligations associated with copyright to both creators and users;
- the Government consider repealing the provisions which allow sculptures and craft works on public display other than temporarily to be photographed, drawn, filmed or painted without permission;
- there be a review of the impact of increasing the term of copyright to life plus 70 years; and
- there be a review of whether a guaranteed distribution of remuneration from statutory licenses should be reserved to the individual creator.

The Inquiry has also recommended that the Government monitor how various areas of copyright and moral rights current work in practice. For example, the Inquiry has recommended that the Government monitor:

- case law developments, and consider amending the current exhaustive definition of “artistic work” in the Copyright Act if it appears that computer-generated art, and art involving chemical, biological and natural processes, are not receiving adequate protection;
- the operation of the consent provisions and the defence of “reasonableness” in relation to actions which would otherwise constitute an infringement of moral rights;
- whether amendments need to be made to the Copyright Act to cover the use of copyright materials for purposes of social comment, parody or artistic appropriation; and
- the practical effect of the provisions permitting art and craft, whether publicly displayed or not, to be filmed and broadcast.

Galleries and museums argued to the Inquiry that they should be permitted to use works within their collections for certain purposes without having to acquire copyright clearances — for example, copying works to include in educational

material and making “thumb-nail” reproductions for their websites. The Inquiry, however, has stated that “providing funding to public institutions to reimburse the cost of compliance may be a more desirable option”, although “more work needs to be done on costing such a proposal”.

Similarly, auction houses contended before the Inquiry that they should be entitled to reproduce artworks in their catalogues without having to clear copyright rights. The Report, however, states that the Inquiry “is not convinced this is a positive direction for Australian copyright law”. The Report notes that “Works of art are reproduced in auction house catalogues for the commercial benefit of the auction house and the vendor”, and that if a vendor does not think that the increase in sale price from having the work pictured in the catalogue will cover the cost of the copyright clearance, he or she can seek to have the artist waive his or her fee.

The Report is available on the website of the Department of Communications, Information and the Arts, at www.dcita.gov.au (shortcut via www.ozco.gov.au).