

# **Australian Copyright Council**

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## ***Submission on Duration of Copyright in Photographs***

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**27 October 2000**

## Australian Copyright Council

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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's functions include giving information and free legal advice about copyright, research, and advocating changes to copyright law and practice which will benefit creators and other copyright owners. Further information about the Council is contained on the Council's web site – [www.copyright.org.au](http://www.copyright.org.au).
2. A number of organisations affiliated with the Australian Copyright Council have made separate submissions to the Committee.

## Summary of our position

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3. We support an amendment to the Copyright Act which would change the period of protection for photographs so that it is the same as for other artistic works. We note that it is open to the Government, and consistent with the WCT, to provide that the period of protection for a photograph unpublished at the author's death is 50 years from first publication rather than 50 years from the author's death.<sup>1</sup>
4. We confirm our support, as stated in our submissions to the Intellectual Property Competition Review Committee, for an extension of the period of protection from 50 to 70 years for all copyright material, including photographs.

## Advantages and disadvantages

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*What are the advantages and disadvantages of the proposed amendments to creators, owners and users?*

5. We submit that the advantages of adopting a protection period for photographs which is the same as for other artistic works include the following:

### Consistency

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6. Photographs should be treated in the same way as other artistic works, because there is no justification for differentiating them. Acknowledgment of this lack of justification led to the 1998 amendments to the ownership provisions in the

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<sup>1</sup> This is the position for engravings, and for literary, dramatic and musical works.

Copyright Act. The reasoning behind those amendments applies equally to the term of protection.

### **Fairness**

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7. It is grossly unfair that a photograph by Max Dupain or David Moore may be out of copyright during the author's lifetime, when artistic works in other media are protected for 50 years after the author's death.

### **Simplification and the CLRC recommendations**

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8. The proposed change would simplify the Copyright Act, and would be consistent with the CLRC's recommendations.

### **International standard**

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9. The WCT represents a new international standard in relation to the protection of photographic works. If Australia becomes a party to the WCT, Australian photographs will be protected for the WCT period in countries which are also a party.

### **Other benefits of becoming a party to the WCT**

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10. The proposed term of protection is a requirement for becoming a party to the WCT. The WCT contains a number of other important provisions, including provisions dealing with the right of communication to the public, sanctions against circumvention of technological protection measures and sanctions in relation to rights management information. The recent Digital Agenda amendments to the Copyright Act are intended to implement the "digital" provisions in the WCT, and thus put Australia in a position to become a party to the WCT.
11. The benefits to Australia of becoming party to the WCT include the application of WCT-derived protection (such as the communication right) to Australian works in countries which are also party to the WCT.

### **Trade-off between current and proposed provisions**

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*What is your view of the potential trade-off between the current provisions, which guarantee 50 years of economic potential, and the proposed amendments which might deliver substantially more than this figure (unless publication is deferred or is not contemplated)?*

12. We submit that the proposed new term of protection is preferable to the current term of protection for the reasons we have set out above.
13. We note that it is open to Australia, consistently with the WCT, to provide the same protection to photographs as currently applies to engravings – that is, 50 years after the author's death if published during the author's lifetime, and 50 years after publication if first published after the author's death.

### **Effects on investment**

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*Will the proposed amendments encourage additional investment in photographic works? Conversely, will the proposed amendments discourage investment in products that incorporate photographs?*

14. We submit that it is unlikely that the proposed new term of protection would discourage the making of, or investment in, photographic works. On the other hand, we submit that the proposed amendments would provide greater incentive for the making of, and investment in, photographic works.
15. The longer period of protection may provide incentive for the preservation and dissemination of old, rare photographs which would otherwise be close to the end of their period of protection.
16. We also submit that investment is not the only justification for copyright protection, and that other issues such as fair reward to the photographers should also be taken into account in the consideration of this issue.

Libby Baulch  
Executive Officer  
27 October 2000