



Australian Government
Attorney-General's Department

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Senate Environment and Communications References Committee

Inquiry into the National Cultural Policy

Attorney-General's Department Submission

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Introduction

The Attorney-General's Department (the department) welcomes the opportunity to provide a submission to the Senate Environment and Communications References Committee (the Committee) Inquiry into the National Cultural Policy—*Revive: a place for every story, a story for every place (Revive)* as it relates to the department's policy responsibility for copyright.

The department supports the Attorney-General in her role as minister responsible for administering the *Copyright Act 1968* (Cth) (the Copyright Act). It also develops Australian copyright policy for the government's consideration and represents Australia's interests on international copyright issues.

Copyright, a type of intellectual property right founded on a person's creative skill and labour, protects the original form or way an idea or information is expressed. The most common forms of material that can be protected by copyright are writing, visual images, music and moving images.

Copyright gives its owners (often the creators of the material) exclusive economic rights to do certain acts with that material. These include the right to copy, publish, communicate and publicly perform the copyright material. Communication can include broadcasting material or making it publicly available online. Copyright protection is free and automatic in Australia: there is no formal registration system or specific documentation required to prove ownership of copyright. Copyright law also gives authors and performers non-economic rights, known as moral rights. Moral rights recognised in Australia are the right of integrity, the right of attribution and the right against false attribution.

As *Revive* acknowledges, Australia's copyright laws incentivise the creation of new cultural material while also allowing reasonable and equitable use of copyright material in the public interest, and work in concert with other legal and policy mechanisms to support the success and vibrancy of Australia's cultural and creative sector.

Delivery of actions under Revive

The department was responsible for one copyright-related action under Revive Pillar 3 (Centrality of the Artist): to undertake a broad and comprehensive review of the effectiveness of Australia's copyright enforcement regime to make sure it remains fit-for-purpose, and to consider opportunities to improve Australia's copyright framework by working with copyright owners and users. It delivered this action by conducting a Copyright Enforcement Review through public consultation in 2022-23 and by holding a series of Copyright Roundtables with key stakeholders on copyright priorities and emerging issues in 2023.

Copyright Enforcement Review 2022-23

On 24 November 2022, the then Attorney-General, the Hon Mark Dreyfus KC MP, announced a Copyright Enforcement Review (the Review) to give those dealing with copyright enforcement issues in practice an opportunity to comment on the effectiveness of Australia's current system.

Public consultation for the Review ran from 9 December 2022 to 7 March 2023. The Government received more than 80 submissions expressing diverse views from various stakeholders and members of the public

regarding how Australia's copyright enforcement regime is working and suggestions for improvement. The issues paper for the Review and public submissions received are available on the department's website.

Following the Review, the Government indicated that it would focus on developing reform options for:

- reducing barriers for Australians to use the legal system to enforce copyright, including examining simple options to resolve 'small value' copyright infringements, and
- improving understanding and awareness about copyright.

Since the Review, the department has engaged further with external stakeholders to gather additional information to support the development of reform options in these areas. Work on these issues continues.

Copyright roundtable meetings 2023

Across 2023, the department held a series of roundtable meetings with key stakeholders on copyright priorities and emerging issues. The purpose of these discussions was to develop practical and achievable copyright reform proposals for the government to consider and potentially take forward with broad stakeholder support.

Four roundtable meetings were held between February and December 2023, bringing together over 40 organisations from a range of sectors to identify priority reform issues for potential collaboration. At the meetings, participants discussed 5 reform issues and potential next steps. These issues were:

- a limited liability scheme for the use of orphan works
- the use of copyright material in remote learning environments
- quotation from copyright material
- the implications of AI for copyright law
- the definition of 'broadcast' for the purposes of the Copyright Act.

Many participants commented positively on the roundtables as a model for engaging with key stakeholders on copyright reform issues and noted the open-minded and collaborative approach representatives from various sectors had brought to the process.

The Government has made announcements on three of the five reform issues discussed with participants as outcomes from the roundtables.

Copyright and AI

On 5 December 2023, the then Attorney-General announced the establishment of a Copyright and AI Reference Group (CAIRG) to better prepare for future copyright challenges emerging from AI. The department's consultation with the CAIRG to date is discussed further below.

Orphan works

On 11 April 2024, the former Attorney-General, the Hon Mark Dreyfus KC MP, announced the Government's intention to undertake further consultation with key stakeholders on the design of a proposed Australian orphan works scheme.

'Orphan works' are copyright materials for which a copyright owner cannot be found yet can have significant value for users and Australian society.

Participants in the 2023 copyright roundtables agreed that the Government could implement an orphan works scheme that provides greater certainty and reduced legal risk to users, without unreasonably prejudicing the interests of copyright owners, or causing unnecessary administrative burdens for either party. There was agreement on a number of key elements of a scheme and willingness to continue working with the department as it develops detailed design options.

The department held further meetings with interested stakeholders in 2024-25 to discuss and consult on scheme design options and invite written feedback, with a view to finalising a legislative proposal that could be put forward to the Australian Government with broad stakeholder support.

The department is continuing to progress this work.

Remote learning

On 11 April 2024, the Government also announced it would move amendments to the Copyright Act to make clear that:

- existing rules for use of copyright materials in the classroom also apply when lessons are delivered online
- parents and guardians can assist students in lessons in which copyright material is used, which is particularly important for younger students who need assistance to take part in online learning, and
- individuals or organisations (such as local police) can present to or be involved in a class without this affecting how copyright material can be used.

These proposed changes reflect agreement reached through the 2023 roundtables, including between representatives from the education and creative industries sectors. Work on these proposed reforms is progressing. The department is working with the Office of Parliamentary Counsel to prepare amendments and has engaged with key stakeholders through the drafting process.

Opportunities, risks and challenges for Australia's arts and creative sectors associated with emerging technologies such as artificial intelligence

The committee has expressed particular interest in views on any opportunities, risks and challenges for Australia's arts and creative sectors associated with emerging technologies such as artificial intelligence.

Consultation with the CAIRG since early 2024 has allowed the department to hear views from diverse stakeholders on opportunities, risks and challenges arising from the intersection of AI and copyright law.

The CAIRG was established as a standing mechanism for engagement with stakeholders to consider issues in a careful and consultative way. Through the CAIRG, the Government has been engaging with around 70 stakeholders – including groups representing individuals and businesses in the arts and creative, media and technology sectors – to understand their concerns and the impacts of AI on different industries as they relate to copyright. This engagement is informing the department's advice to Government regarding key policy ideas and consideration of whether any reforms are required.

The department's engagement with stakeholders to date has demonstrated that different industries have different views on the impacts of AI on the copyright system and the best ways to address these impacts. Ensuring Australia's copyright settings apply appropriately to AI requires careful policy development, work across government, and further consultation with stakeholders to understand the impacts on their sectors, the broader community and economy as AI continues to evolve.

The department continues to progress this work.