



## Australian Copyright Council - Submission in Response to the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019

### 1. About the Australian Copyright Council

The Australian Copyright Council (ACC) celebrating its 50th anniversary, is an independent, non-profit organisation that represents the peak bodies for professional artists and creators working in Australia's creative industries, as well as Australia's major copyright collecting societies). The ACC currently has 30 members, listed in Annexure 1.

We provide extensive, free online resources, such as detailed information sheets, including one for [Indigenous arts](#), as well as pro bono legal advice on Australian copyright law to creators and users. We regularly provide legal advice and educational seminars directly to (among others) artists.

### 2. General comments

The ACC welcomes the introduction of the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019 (the **Bill**). The historical limits of Australian *Copyright Act 1968*, in protecting Indigenous cultural expression mean that this Bill is necessary as part of a framework to protect and encourage the continuing tradition of Indigenous artistic works, which play a significant role in the cultural and economic landscape of creative Australia.

Australian copyright law applies to Indigenous artistic works in the same way as it applies to other artistic works. There are no special provisions in the Copyright Act for Indigenous works, and no recognition of customary or traditional Indigenous laws. Some of the consequences of this are:

- (i) copyright in an artistic work usually expires 70 years after the death of the creator so there is no copyright protection for old Indigenous artworks such as rock art;
- (ii) because copyright does not protect ideas, methods or styles, it does not prevent people using styles belonging to and readily identifiable to certain Indigenous communities such as dot painting

- (iii) there is only an obligation to obtain permission from the copyright owner – there is no obligation to obtain permission from an Indigenous community whose customary laws apply to uses of a work or style of work.

Making it an offence to supply or offer commercial goods that include Indigenous cultural expression (as defined) unless supplied by, or in accordance with a transparent arrangement with an Indigenous artist or relevant community group, will go a long way to protecting the sacred ideas, methods and styles of Indigenous people, while importantly promoting the voice of the group, rather than the individual, when it comes to creative and cultural expression. The Copyright Act is limited in its effect in doing this.

In cases considering copyright and Indigenous art, the economic impact of copying has been highlighted, in addition to the wider cultural harm caused. In the case of *Milpurrurru & Ors v. Indofurn Pty Ltd & Ors*<sup>1</sup> it was said:

*“[I]n the cultural environment of the artists the infringement of those rights has, or is likely to have, far reaching effects upon the copyright owner. Anger and distress suffered by those around the copyright owner constitute part of that person’s injury and suffering.”*

Similarly, in the case of *John Bulun Bulun & Anor v R & T Textiles Pty Ltd*.<sup>2</sup>, it was noted that infringement caused irreparable harm to the artist’s community and his standing in the community:

*“It interferes with the relationship between people, their creator ancestors and the land given to the people by their creator ancestor. It interferes with our custom and ritual, and threatens our rights as traditional Aboriginal owners of the land and impedes in the carrying out of the obligations that go with this ownership and which require us to tell and remember the story of Barnda [the long neck tortoise – the ancestor creator], as it has been passed down and respected over countless generations.”*

The court accepted that the community could not own the copyright, because only the artist could own the copyright. However, the court found that because of the relationship between the artist and his community, and the responsibilities each had, under equity, the community had a special interest in ensuring the artist used their copyright to prevent misuse.

### **3. Comment on the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019**

The ACC supports passage of the Bill in its present form subject to the following comments only.

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<sup>1</sup> Unreported, 13 December 1994, per von Doussa J.

<sup>2</sup> Unreported, Federal Court of Australia, von Doussa J.

The definition of “**Indigenous cultural artefact**” appears to be limited to works of artistic craftsmanship. The ACC is concerned that the inclusive list does not cover contemporary developments in Indigenous cultural practice. For example, the specific reference to “paintings on bark”, seems to indicate that paintings on other media including cloth and canvas, may be excluded. Other works, resulting from, for example cloth making, print making and mark making, whilst they may arguably fall within the broader definition of “**Indigenous cultural expression**”, also may not fall within the definition of “**Indigenous cultural artefact**”.

The ACC supports a broader definition of “Indigenous cultural artefact” to reflect the wide range of current Indigenous cultural expression.

#### **4. Summary and Conclusion**

The ACC supports the introduction of the Bill subject to the comments made in point 3. above, as going part way towards a suite of reforms to support the protection of Indigenous culture and knowledge.

The ACC understands the difficulties in reconciling the western systems of recognition of copyright with the Indigenous notions of community ownership.

If the Committee requires anything further information, please let us know.

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Eileen Camilleri  
Chief Executive Officer  
Australian Copyright Council

14 August 2019

### **SCHEDULE 1: AFFILIATES OF THE ACC**

As at the date of this submission, the Australian Copyright Council members are:

1. Aboriginal Artists Agency
2. APRA | AMCOS
3. Ausdance National
4. Australia New Zealand Screen Association
5. Australasian Music Publishers Association Ltd
6. Australian Cinematographers Association
7. Australian Directors Guild
8. Australian Guild of Screen Composers
9. Australian Institute of Architects
10. Australian Institute of Professional Photography
11. Australian Music Centre
12. Australian Photographic Judges Association
13. Australian Publishers Association
14. Australian Recording Industry Association
15. Australian Screen Directors Authorship Collecting Society Limited
16. Australian Society of Authors
17. Australian Society of Travel Writers
18. Australian Writers Guild
19. Authentic Design Alliance
20. Christian Copyright Licensing International
21. Copyright Agency
22. Design Institute of Australia
23. Media Entertainment & Arts Alliance
24. Musicians Union of Australia
25. National Association for the Visual Arts
26. National Tertiary Education Union
27. Phonographic Performance Company of Australia
28. Illustrators Australia
29. Screen Producers Australia
30. Screenrights