

Views & Perspectives from Image Makers on the *The Parliament of the Commonwealth of Australia* Copyright Amendment Bill 2025

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Contents

1. **Summary**
2. **Image Makers**
3. **Orphaned Imagery**
4. **Orphan Works Scheme Conditions**
5. **Remote Learning & Minor Measures**
6. **Concluding Remarks**

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Australian Government - Committee Secretary
Senate Legal and Constitutional Affairs Committee

Relating to:
Copyright Amendment Bill 2025, dated 6th November 2025

On Wednesday 5 November 2025, the Federal Attorney General presented the Copyright Amendment Bill 2025 to Parliament. The Bill includes provisions for an Australian Orphaned Works Scheme, among other matters. The Bill was subsequently referred to the Senate Legal and Constitutional Affairs Legislation Committee who have sought public submissions on the content of that Bill. This document contains our response to that invitation.

1. Summary

Broadly speaking, Image Makers Association Australia does not support the introduction of an Orphan Works Scheme within the Australian Copyright Act. We would be greatly concerned if such a scheme ended up being used by businesses to carry out profit-generating enterprises, using the scheme to usurp long-established copyright licensing practices.

However, should the Australian Government implement such a scheme, we would hope and insist that sufficient provisions are included that would minimise the negative harm and impacts that such a scheme would likely have upon the economic and moral rights of professional image makers across the country.

2. Image Makers

Image Makers Association Australia (IMAA) represents professional and emerging photographers and other image makers in Australia through education, advocacy, celebration and connection. We work on behalf of our members to improve the business landscape for photographic and image making professions, building confidence in the value of photography and ensuring image making remains a viable career path into the future.

Our members are commercial image makers, stills photographers, videographers and visualisation specialists working across portraiture, editorial, architecture, design, food, advertising, corporate, lifestyle, travel, studio, still life, fine art, visualisation art, montage artistry, social media content and more. Most members primarily work on a business-to-business basis. They are commissioned to produce imagery for a range of organisations including small, medium & large businesses, corporations, government, not for profit organisations as well as print and online editorial publications. Their work can be seen across a wide range of media promoting a variety of products and services both in Australia and abroad.

Income is typically generated by our members through two separate revenue streams. The first stream consists of income earned from commissioning clients who engage our members to generate imagery for a specific project brief, inclusive of licenses to use that imagery. The second revenue stream consists of payments for further licensing of imagery outside of commissioned work, where copyright is owned and rights-managed by our members. Two surveys¹ that we conducted of the broader Australian professional photographic community in 2022 and in 2024 both indicated that, on average, a significant portion of survey respondents generate somewhere between twenty and thirty percent of their annual revenue from selling licenses to businesses for use of their imagery.

Copyright and its enforcement are at the core of Image Makers Association Australia. Concerns around copyright and licensing were noted by over 70% of our founding members as being one of the most pressing issues currently facing our industry as a whole. This statistic was established out of a survey conducted of our membership in October 2022 to establish priorities for what was then our newly formed association.

¹ The data collected in these surveys, and others, along with our analysis, can be found in various entries on our Advocacy webpage, here: <https://www.imagemakersassociation.com.au/advocacy> and also here: <https://www.imagemakersassociation.com.au/chargingssurvey>

3. Orphaned Imagery

'Orphaned Work' : it's a strange term, yet is also an apt descriptor. To quickly and loosely define the topic at hand, an orphaned work is a creative work that is protected by copyright but whose author (a kind of 'parent') is not known and cannot be found. Many creative works are not easily orphaned. Things like books almost always include the copyright owner and the author's name in multiple places. Similarly, most commercially produced films and television programmes include credits at the beginning and/or end of their work, making it very clear who made the work and who owned copyright at the time of production. Music recordings existing on physical media are usually accompanied by a record cover or CD cover that includes the relevant copyright data, while digitally streamed music content is rarely transmitted without adjacent attribution. Thanks to this embedding of authorship within and around the works themselves, work of this nature is not easily orphaned.

Photographers and other image makers, on the other hand, don't often enjoy such benefits. In days of old, physical photographs would often make their way out into the world without any inscription or annotation of authorship on them. Occasionally, someone might have written the name of a photographer on the back, but not often. Similarly, photographic negatives rarely had or have any attribution included on the negatives themselves. While we could all watermark our photographs with attribution and copyright information, such marks would distract attention away from the content of an image, diminishing the quality, impact and commercial value of each work. Fortunately though, the digital age presents photographers with some clever advantages: professional photographers can and do embed their attribution and copyright information within the metadata of their digital files. This metadata is critical in re-establishing and maintaining moral rights of attribution as well as avenues for commercial licensing that are essential for those of us who seek to generate a commercial livelihood through image making.

Sadly though, the metadata that photographers take the time to carefully embed in their commercial work is often concealed or removed by others. Many websites, including popular image-based social media platforms such as Instagram and FaceBook automatically strip out and delete metadata at the moment of upload. Others take the time to deliberately remove that attribution data manually. This all occurs despite such removal already being prohibited under Australian copyright legislation.

Without thus being able to rely upon attribution metadata remaining in digital files, photographers and other digital image makers must rely instead on the good will and diligence of the people using their work to publicly and visibly attribute the author within the text that accompanies each communicated image. In practice, this works some of the time. Yet, more and more, our images are shared across the internet, particularly on social media sites owned by Meta and others, without any credit, attribution or acknowledgment of who the author and copyright holder of the image is. While IMAA has been doing its best with limited resources to educate and inform the general public around this topic, the immense scale of use and consumption across the internet of the imagery that our members create means that our work is regularly used without any attribution. As a result of these unhelpful practices, photographs and other digital images are very easily orphaned, perhaps more than any other type of creative material. And those images are orphaned in alarming volumes each and every day.

Given the background described above, and noting that our members generate part of their business revenue from licensing their images, we are thus very wary of any Government-endorsed scheme that would openly permit people to use creative work without permission or payment simply because the name of the author cannot be easily found. It is for this reason that IMAA does not support the introduction of an Orphan Works Scheme within the Australian Copyright Act and would encourage deep consideration of the impacts of any such scheme upon the businesses of image makers in Australia.

4. Orphan Works Scheme Conditions

To be clear, the proposed orphan works provisions within an amended Australian Copyright Act mark a loosening or diminishing of protections for creators of copyright material. As things currently stand, creative imagery may not be used without permission or remuneration except under a few clearly defined circumstances such as statutory licensing for government or educational use or under the fair dealing provisions. The amendments that are currently proposed in relation to orphan works would provide an additional avenue for copyright imagery to be used without permission and without payment.

In its currently proposed form, the amended Act would reduce the capacity for image makers to seek damages or accounts of profit or other monetary works if their work is infringed by people using the proposed orphan works scheme. The scheme provides only for distribution of 'reasonable payment' for use of work under the scheme if and when a copyright owner comes forward, and then only where the use has been made in a non-private or non-domestic capacity. These measures constitute a reduction in the protections currently afforded to image makers and other owners of copyright material. While we welcome the provisions within the proposed Bill that provide avenues for our members to be later paid for use of their work by people relying upon the orphan work scheme, we are reluctant to provide support for measures that diminish creators rights to seek further damages or account of profits.

We note that the proposed Bill includes a requirement for anyone relying upon the orphan work scheme to undertake, record and retain a reasonably diligent search. In our eyes, such a search should be considered essential, so we welcome this inclusion in the Bill. We note also that there might be the possibility that, when people undertake such a search, a hitherto unknown image maker might become known and that, as a result, a licensing fee might be obtained without relying upon the orphan works scheme at all. This could be a benefit for our members and for other photographers and image makers alike.

However, the language used in the proposed amendments to the Act around the nature and detail of the search is loose, vague and open to interpretation. The term 'reasonably diligent search' suggests good and thorough intent, however what constitutes a reasonable or diligent search is not defined nor sufficiently elaborated upon within the Bill. We note that references are made in the Bill to 'guidelines', however at the time of writing we have not seen any such guidelines. Should the Bill be passed, we would hope and insist that firm, detailed and clearly defined wording around the detail of what constitutes a reasonably diligent search is included. Such wording would preferably be included within the Act proper, or alternatively should be included in guidelines that have been written, developed and published prior to the Act coming into effect. As image makers, we would insist that any guidelines relating to the search include requirements for users of the scheme to undertake and record multiple internet searches of known, large and dominant web-based image libraries.

The bill makes multiple references to 'reasonable' periods of time, particularly in relation to retaining a record of a search. The nature of orphaned works is such that, as the author is not known and cannot be found, including via a reasonable search, a long period of time might elapse before an owner of a work might come to understand that their work has been orphaned and to then subsequently realise that their work has been used under the scheme. For this reason, we would prefer that the amended Act include a requirement for search records to be retained by anyone relying upon the scheme for at least the duration of the use and then a further minimum of six years after completion of the use. This period of time would be consistent with the statute of limitations in civil matters that relate to the period for bringing a claim to collect a debt.

The proposed Bill also includes a requirement for anyone relying upon the scheme to provide formal notice to be given of their infringing use. This, again, is a good thing in our

eyes. Yet the Bill does not adequately clarify how, where and for how long such a notice might be made. If the amended Act was to permit people to only provide their notices within their own material then it would be very difficult and highly unlikely for the original owner of the work to locate such a notice and then undertake corrective action. Our preference would instead be for the establishment of some form of publicly accessible register or forum where, at the very least, short descriptions of any use that has occurred that relies upon the scheme can be openly reviewed on a regular basis by image makers and other copyright owners from anywhere in the country. Our preference would be for such requirements to be included within the Act itself, rather than in any associated guidelines.

In relation to requirements for when the scheme may be used or relied upon, our preference is that non-orphaned, substitute content should always be used in the first instance, rather than relying upon the scheme, where practical. To facilitate such a requirement, it should be made clear within the Act that the scheme is intended to enable the use of non-substitutable material only. If that proves impractical then such a requirement should be included in the relevant guidelines.

With regard to any guidelines that might compliment the Act, we note that we would be happy to assist and advise government with that process, through the Office of the Attorney General. On behalf of our members, we would like to participate in order to ensure that appropriate detail is added to the workings of the scheme so that negative impacts upon the businesses and licensing revenue streams of photographers and image makers are kept to an absolute minimum.

5. Remote Learning & Minor Measures

Briefly, and notwithstanding our comments above, we note that we support the other parts of the proposed Copyright Amendment Bill that do not relate to orphaned works. Students in Australia already benefit from relatively open access to copyright material for educational purposes. Our members enjoy small payments via the statutory licensing scheme for such use. Clarifying that such use extends not only to physical classrooms but also to online or hybrid teaching environments seems sensible to us. We thus fully support the amendments proposed in Schedules 2 & 3 of the Bill.

6. Concluding Remarks

While Image Makers Association Australia does not support the introduction of an Orphan Works Scheme within the Australian Copyright Act, we acknowledge that the scheme would have some public interest benefits. Those benefits might primarily relate to archival and documentary uses, particularly with content that has been made in a non-commercial environment. The scheme does, however, also have the potential to diminish the rights and protections that creative professionals such as photographers and other image makers rely upon for their commercial viability, particularly in relation to licensing income. If poorly implemented, there is potential for the scheme to be used by businesses to ignore and usurp long-established copyright licensing practices.

Given how easily photographs can become orphaned and the vast volume of non-attributed copyright imagery that already exists all over the internet, we remain deeply concerned about how a government-sanctioned orphan works scheme might apply to our work. Many

of our members already waste large amounts of time pursuing infringements due to non-attributed or stolen imagery. To now further complicate the ways that their work can be used, with new limits on legal remedies for such use, a scheme such as this could further diminish the productivity and income-generating capacity of professional image makers.

Should the Australian Government ultimately implement an orphan works scheme, we would hope that sufficient restrictions such as those mentioned in Part 4 above are included. By keeping the restrictions and limitations upon use under the scheme tightly worded, this might help to minimise any negative impacts that such a scheme would likely have upon the economic and moral rights of professional image makers across the country.

Thank you for providing our association with the opportunity to provide further feedback to Government on these matters that are critical to the ongoing commercial viability of our industry. Being adequately remunerated for all types of use of copyrighted work is a critical component of any professional image-maker's business model. Issues around copyright and its enforcement are core business matters for Image Makers Association Australia and our key reason for existing. We look forward to seeing copyright legislation continue to evolve and better support and protect the commercial realities of working professional image-makers now and well into the future.



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Acknowledgement to Country

Image Makers Association Australia acknowledges and pays respect to the past, present and future traditional custodians and elders of Country throughout Australia. We recognise their continuous connection to the lands, waters, culture and communities on and within which we work.

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