



28 November 2025

Submission response – Inquiry into the Copyright Amendment Bill 2025

Via email to legcon.sen@aph.gov.au

The Arts Law Centre of Australia (Arts Law) is grateful for the invitation to contribute to ‘orphan works’ issues and in relation to this Bill, which we support in principle in contexts where rightsholders and creators genuinely cannot be located

Who We Are: The Arts Law Centre of Australia

Arts Law has protected and advocated for the rights of artists since 1983. We are a national not-for-profit community legal centre providing free or low-cost legal advice to Australian artists and arts organisations. Each year, Arts Law assists thousands of Australian artists and arts organisations across all Australian states and territories. Arts Law would like to acknowledge the Traditional Owners of the lands on which our organisation works and pay our respects to Elders past and present.

Our submission is informed by Arts Law’s 40 years of experience providing legal advice and education to the Australian creative community. In 2023-2024, we delivered 2,970 pieces of legal advice. At this point in 2025, we have delivered over 3,200 pieces of advice, demonstrating an ever-increasing need amongst creators for advice about their rights. Arts Law’s clients include artists of all disciplines and creatives across the arts community, including visual arts and crafts, film, multimedia, digital, new media, performing arts, games, fashion, design and music.

Arts Law welcomes the Bill’s intention to amend the *Copyright Act 1968* (Cth) (the Copyright Act) to clarify the situation with respect to what are known as ‘orphan works’ in Australia. We hope that the introduction of an Australian orphan works scheme will achieve its stated goal of clarifying the scope of provisions relating to the performance and communication of works or other subject matter in the course of educational instruction, and make necessary technical amendments, while simultaneously upholding the rights of creators and rightsholders with respect to copyright works and other subject matter including if they are unknown and emerge at a later time. The Arts Law Centre of Australia (Arts Law) is grateful for the opportunity to have provided input to the Attorney-General’s Department (the Department) addressing the Orphan Works Scheme Design Options paper back in 2024 and to continue our input with our

participation in the 12 February 2025 roundtable meeting and this response to the January 2025 ‘Orphan Works Scheme – Proposed Design’ paper.

Arts Law reiterates our stance that artists’ capacity to earn income through their exploitation and control of their copyright material should always be a priority consideration in the context of apparently orphaned works, as well as in relation to any other changes to the Copyright Act.

We appreciate that with this Bill the Department has effectively recognised the importance of Indigenous Cultural and Intellectual Property (ICIP). We note the importance too of consultation with First Nations peoples in relation to any legislative change that may impact the use of their knowledge and culture and to consider the effect of these legislative changes alongside the introduction of standalone ICIP laws.

Overall, as above, Arts Law supports in principle addressing the orphan works problem where rightsholders and creators truly cannot be found. We have the following comments with regard to the Bill and associated materials:

- **Limitation on remedies when owner cannot be found**

We understand the purpose of Division 2AAA to “limit the remedies that may be available for infringement of copyright where the copyright owner or owners could not be identified and located at the time of the infringing use” and the need to limit remedies to order reasonable payment (116AAD(1)), so long as a reasonably diligent search within a reasonable period of time and with a record maintained, notice given and with owner/s remaining unidentified (116AAE (1)-(7)). Division 116AAE and in particular subsection 116AAE (8) might include specific reference to ICIP in the context of the nature of the material at issue and the appropriateness of its treatment including in relation to searching for an owner or other rightsholder, custodian or creator associated with it. Similarly, such explicit reference to ICIP might be included in subsection 116AAF(5) in relation to factors that may be considered in the context of reasonableness around terms for continuing use of material.

- **Right for owners to come forward and be paid**

We support the introduction of a defined mechanism for creators to be able to seek payment and control future use once they are identified. However, we would also like to see a firm commitment to monitoring the operating of the exception; in particular, in relation to the impact on creators’ incomes, including First Nations artists’ licensing revenue from educational use. Additional support for creators might sit outside of this legislative framework and enhance its efficacy and public trust in the scheme, particularly amongst creative industries.

- **Higher standard for diligent search for ICIP material**

We are pleased to see that the Explanatory Memorandum (EM) states that higher standards are expected for 'vulnerable materials' and 'culturally sensitive materials', including photographs and images which would indicate that First Nations works and ICIP-related material require a much more stringent search and consultation process. We support the development of industry guidelines that set special standards for 'sensitive or vulnerable works' (including ICIP) that might require higher search standards and safeguards.

- **Special standard for reasonably diligent search**

Such guidelines could require that any use of material potential including ICIP cannot involve a 'reasonably diligent' search unless there has been community-level consultation and adherence to cultural protocols. Further, we believe it would be appropriate to presume no 'orphan' status where a relevant community, art centre or Land Council is reasonably identifiable as custodian and their permission sought.

- **First Nations drafting and driven for ICIP protocols**

Ideally the drafting of such guidelines would be led by First Nations persons, organisations, art centres and peak bodies. It would be geared towards co-developing protocols that become standards for using ICIP in archives, galleries and online collections. Courts could then treat failure to follow those protocols as falling short of a 'reasonably diligent search' as outlined in proposed conditions for the purposes of subsection 116AAD(1) (conditions in Division 116AAE).

- **Strengthen language**

We note that the Bill itself doesn't specifically define protect or create special rules for ICIP and instead only the Explanatory Memorandum (EM) hints at 'culturally sensitive materials' and leaves the detail to guidelines and ministerial instruments. 'Vulnerable and culturally sensitive material' language is insufficiently clear (and may confuse both rightsholders, including cultural rightsholders, as well as prospective users of the material) and 'ICIP' is not explicitly referenced in the Bill. It also illustrates the need for forthcoming standalone ICIP legislation to be implemented in a way that is integrated with and acknowledged as a priority within existing and amended legal mechanisms, such as those contained in the Copyright Act. Ideally, also, the Bill and/or EM would allude to the introduction of the standalone ICIP legislation, given that the Government has committed to it.

While the EM mentions 'vulnerable materials' and 'culturally sensitive materials' but does not embed a mandatory higher standard or require consultation with Indigenous communities.

Additional Commitments:

Ideally, to underscore and demonstrate the Department's genuine commitment to protection of ICIP the Bill might include:

Explicit ICIP safeguards (not just guidelines) e.g. a provision that certain categories of material containing ICIP cannot be treated as 'orphan' without prescribed community consultation and consent processes.

Stronger language around 'vulnerable materials' e.g. specific reference to First Nations cultural material and an express requirement for higher search standards and consultation.

Remedies where ICIP is misused i.e. a carve-out from the limitation on remedies where the work contains ICIP material.