



October 30, 2006

Senator Payne,  
Chair Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
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Dear Senator Payne

*Re: Copyright Amendment Bill 2006*

The National Association for the Visual Arts (NAVA) welcomes this opportunity to present its views to the Senate Committee on the proposed important amendments to copyright law contained in the Copyright Amendment Bill 2006.

NAVA is the peak body representing and advancing the professional interests of the Australian visual arts and craft sector. NAVA directly represents over 3,000 members across Australia and its constituency of more than 20,000 visual creators and an estimated 1000 infrastructure organisations working in Australia today. Its constituency includes a large proportion of intellectual property producers and copyright users, such as visual artists, craft practitioners and designers, other arts professionals including curators, educators, arts writers and critics, arts administrators, art librarians and agents, and a range of organisations including public, artist run and commercial galleries, arts agencies, arts service organisations, educational institutions, arts publications, manufacturers and retailers.

In this instance, unfortunately, NAVA has not had the opportunity to do the further research and consultation with its constituents which it would have wished, in order to provide a more considered response to this proposed legislation.

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NAVA advances the professional interests  
of the Australian visual arts and craft sector

Broadly speaking, NAVA supports the submissions being made by the Australian Copyright Council (ACC), the Arts Law Centre of Australia and Viscopy. However, the main issue which causes us particular concern is the proposed introduction of new exemptions for “parody” and “satire”. This is a vexed question within the visual arts community. No definition of either term is provided in the legislation. Since parody and satire are based on common understandings of cultural references and meanings and dictionary definitions are so open to interpretation, it is difficult to imagine how a decision could be made when weighing up competing claims. Within such a culturally diverse nation as Australia, finding common understandings about what constitutes parody and satire will be extremely challenging. The example of the Danish cartoons about Islamic subject matter is pertinent. One person’s satire is another’s sacrilege.

As described in NAVA’s previous submission in response to the Government’s discussion paper on the operation of the exceptions in the Copyright Act (particularly the fair dealing exceptions in ss 40-43(2) and ss103A103C), some artistic practices involve referencing previous works of art; incorporating elements of works by other artists in a new work; or building a collective work over time and/or from more than one location. In relation to the long standing artistic tradition of making work which consciously or even unconsciously is inspired by the work of other artists, (indeed some work is described as a homage to the work of another artist) there is usually no problem, in that the reference works are out of copyright. However, where the work is still covered by copyright, some people in the arts community have argued for the introduction of exemptions to allow “creative” use by an artist of another artist’s work for their own purposes including adaptation and commentary. This need is not entirely satisfied by the introduction of the ‘parody’ and ‘satire’ exemptions.

With the advent of the internet, some artists are engaged in a process where they take another artist’s work and change it in some regards to make a “new” work. This may happen once or repeatedly where the work has a life and evolves over time through the participation of two or more creators in the process. This would seem straightforward in that the artists involved, do so voluntarily and in full knowledge of the process. However, difficulties arise where this form of use is extended to using the work of another artist who is not a participant in this process.

Since artists trade on their reputation, the way in which their work is treated by others can have substantial impact on their professional reputation, and therefore their potential to generate income from the sale and other uses of their work. NAVA would not want to see a situation in which the relatively recently introduced Moral Rights provisions are undermined by including exceptions for subjective notions such as ‘parody’ and ‘satire’.

A recent example is that of the work produced by two Melbourne artists which had been intended to be represented by Gertrude Contemporary Art Spaces at the 2006 Melbourne Art Fair. However, their installation work reused a photographic work of Indigenous children by a dead photographer whose image was still in copyright. After questions were raised, the work was withdrawn by the artists. This sparked a very interesting debate in the current issue of Eyeline magazine #61 where the artists, gallery staff, representatives of Arts Law and NAVA, Indigenous spokespeople, curators and academics each interpreted in a different way the intention of the creators, the meaning of the reuse of the photographic work and the rights of all involved – the reusing artists, the original photographer, the children in the photo and their Indigenous community and the audience for art.

It is this question of interpretation of the artist's intention and the meaning of the work for the broader community which NAVA believes will cause great difficulties. While it is true that many artistic creators either consciously or inadvertently refer to, build on, borrow or adapt elements from the work of other artists, it is also the case that many would be dismayed at any changes which could jeopardise the hard won protection of their reputation and sources of income. Of particular concern is that the introduction of 'parody' and 'satire' exemptions in this legislation should not over-ride Moral Rights legislation, and proposed new legislation for the protection of Indigenous Communal Moral Rights.

As stated in NAVA's previous submission in relation to Fair Use, NAVA fully acknowledges the need to achieve a balance between the interests of users of the work of creators to ensure the free flow of knowledge and information for the benefit of the community at large, and the protection needed in the interest of creators themselves.

However, NAVA believes that the introduction of 'parody' and 'satire' exemptions in the *Copyright Amendment Bill 2006* are too loosely dealt with and do not adequately come to terms with the practices outlined above. NAVA therefore recommends that before adopting these exemptions, more time be allowed for responses to be sought from the artistic community and more detailed consideration be given to what might be an appropriate means to deal with legitimating current artistic practices without jeopardising creators' moral rights and source of potential copyright income.

Yours sincerely

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Executive Director