

Secretary
Legal and Constitutional Committee
S1.61
Parliament House
Canberra, ACT 2600

19 May, 2005

Dear Sir/ Madam

RE: INQUIRY INTO THE PROVISIONS OF THE COPYRIGHT AMENDMENT (FILM DIRECTORS RIGHTS) BILL 2005

I am writing with respect to the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the *Copyright Amendment (Film Directors Rights) Bill 2005*.

Visual Artists and Audio Visual Works

1. Viscopy is a copyright collecting society for the visual arts in Australia, owned by 5308 visual authors. Viscopy is a non profit that represents rights for fine artists, illustrators, designers, cartoonists, photographers, graphic artists, textile designers, crafts workers, sculptors and architects.
2. A number of these visual artist members have worked in the film/broadcasting industry or had their artistic works reproduced in audio-visual works.
3. Visual artists receive statutory royalty distributions through Screenrights when their works appear in an audio-visual work that is used in an educational institution, or by Government including broadcast.
4. Screenrights is currently determining the pool of retransmission funds at the Copyright Tribunal. Visual artists will receive 1.9% of the retransmission pool, as yet an undetermined amount.

Background to Viscopy

5. Viscopy is a member of the International Confederation of Societies of Authors and Composers (CISAC) and an associate member of the International Reprographic Rights Organisation (IFRRO), both global bodies for copyright collecting societies closely linked to the World Intellectual Property Organisation (WIPO). The Australian Screen Directors Association (ASDA) is also a member of CISAC.
6. Viscopy membership is free, and we represent two different sets of copyrights for members.

7. Primary rights are represented for 60% of Viscopy membership, which includes the direct licensing of images.
8. Statutory income from Government and Educational use is received on behalf of 96% Viscopy members. The remaining 4% are represented by other collecting societies for statutory rights only.
9. While Viscopy members can receive statutory income in Australia, this income is collected by the two collecting societies declared for these rights under the *Copyright Act 1968*, the Screenrights and the Copyright Agency Limited. Viscopy members receive income from both these collecting societies through Viscopy.
10. Over 40% of Viscopy members are Aboriginal and Torres Strait Islander artists.
11. In addition to managing the copyrights of our members and collecting royalty income for them, Viscopy provides services to members including educational services, information and non legal advice, infringement services where their works are infringed and moral rights services.
12. Viscopy provides licensing services for our licensees which include film producers, commercial makers, publishers auction houses, commercial galleries, public art galleries, manufacturers, and other users of primary licensing artworks such as retail.
13. Viscopy operates in Australia under the accountability mechanisms provided by a voluntary Code of Conduct, carried out annually by Justice Burchett QC.

Copyright – International Agreements and Practice

14. Viscopy notes that Australia is a signatory to the Berne Convention and other agreements such as TRIPS and WIPO Internet Treaties.

Copyright Ownership of Audio-Visual Works and Retransmission

15. Currently copyright in the case of an audio-visual work rests with the Producer. The Producer contracts crew and creative personnel in terms of a work-for-hire relationship.
16. Screenplays become available to the Producer in one of two ways.
17. The Producer commissions the Screenplay from the Screenwriter, in which case the copyright is always the property of the Producer, or
18. The Producer purchases an original Screenplay from the Screenwriter, in which case copyright is transferred to the Producer by contract, on the receipt of payment.

Retransmission Income

19. The Script will receive 22.1% of the retransmission payment from Screenrights. This could be allocated either to the Screenwriter or the Producer, dependent upon who currently owns the copyright of the script.

20. Producers will receive 68.5% of retransmission payment from Screenrights. This may be in addition to the 22.1% for the script if they own the copyright of the script.

Copyright Amendment (Film Directors Rights) Bill 2005

21. Currently Directors have no copyright ownership in audio-visual materials in Australia. They would therefore not be able to share in retransmission income, except by contractual arrangement with the Producer (copyright owner), in the same manner as payments in lieu of residual and royalty payments are currently made by Producers, as per contractual agreement with Directors at the point of hire.
22. The *Copyright Amendment (Film Directors Rights) Bill 2005* proposes to provide for film Directors to be joint copyright owners of their films, along with Producers, for the purpose of the retransmission statutory license in part VC of the *Copyright Act 1968*.
23. This proposal would have the effect of Directors directly receiving copyright royalty income from retransmissions from Screenrights, rather than requiring negotiations, as part of the Directors private hire contract to cover this area, and a diligent Producer to pass on a proportion of retransmission income, as per the contract.
24. Visual artists are also in the position of dependency upon copyright owners to pass on royalty income, and Viscopy supports the principle of all creative interests in a relationship with copyright owners, receiving appropriate remuneration through royalties.

Context

25. The argument as to whether the Director, Screenwriter or Producer is the true author of an audio-visual work has been a point of discussion between the relevant unions around the world since 1923.
26. It is clear that all three are essential to the creation of a film work. The Screenwriter is the creator of the script, the Director interprets this work in a visual way, and the Producer creates the financial and resource environment in which the work can occur.
27. Viscopy notes that the review of all five options in the Explanatory Memorandum was of an economic nature, rather than an operational or creative nature.
28. While there is no doubt that the Director makes a vast contribution to the creation of an audio-visual work, the general copyright practice around the world is to focus on the chain of title through the script. The Director typically receives a percentage of gross income in lieu of royalties, although this would not cover retransmission.

29. For this reason, while Viscopy supports the *Copyright Amendment (Film Directors' Rights) Bill 2005* in its efforts to secure a proportion of retransmission income for Directors, we agree with Option 5 of the Explanatory Memorandum, that the relevant amendments to the *Copyright Act 1968* should have, no practical copyright impact for current audio-visual copyright arrangements for creators and owners, beyond retransmission. This is a particularly key question for Screenwriters, whose link to copyright following the sale of their scripts to Producers, is far from straightforward.
30. The proposed Bill will have a negligible impact for the current copyright arrangements for Producers, because a Director will never work without being in an employee relationship with the Producer. This is a similar approach to that taken in the United Kingdom.

Yours sincerely

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Viscopy