



AUSTRALIAN  
COPYRIGHT  
COUNCIL



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***Submission to Senate Legal and Constitutional  
Committee on Copyright Amendment (Film  
Directors' Rights) Bill 2005***

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**May 2005**

## Australian Copyright Council

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1. The Australian Copyright Council is a non profit company. It receives substantial funding from the Australia Council, the Federal Government's arts funding and advisory body. The Copyright Council provides information about copyright via its publications, training and website, provides free legal advice about copyright, conducts research, and represents the interests of creators and other copyright owners in relation to policy.
2. Some of the organisations affiliated with the Australian Copyright Council have made separate submissions to the Senate Legal and Constitutional Committee in relation to the Copyright Amendment (Film Directors' Rights) Bill 2005.

## Our previous submission on film directors' rights

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3. In October 2000, we made a submission to the Government supporting the introduction of film directors' copyright, in response to its issues paper. In that submission, we summarised our proposed approach as follows:

We support the recognition of film directors' authorship in relation to the economic rights in a cinematograph film. Our proposal is as follows:

- where a film has a principal director, the principal director be deemed to be the author of the film;
- for some films, there may be no principal director;
- where there is a principal director, the copyright in the film would be first owned by:
  - the director, or the director's employer, or the assignee of the director's future copyright interest, and
  - the "maker", or the person who commissioned the maker to make the film, or the assignee of the maker's future copyright interest;
- where there is no principal director, the copyright would be first owned solely by the "maker", or the person who commissioned the maker to make the film, or the assignee of the maker's future copyright interest;
- in some cases, the same person may be the first owner of both the maker's interest and director's interest;
- the current definition of "cinematograph film" would remain;
- in addition to the current bases on which copyright may subsist in a film, copyright would also subsist if the director were a citizen or resident of Australia, or of a country listed in the International Protection Regulations;
- if the film has a principal director, the period of protection would be the life of the director plus ... 70 ... years; in other cases, the period of protection would be ... 70 ... years from first publication;
- the rights applying to films would remain the same, as would the exceptions to those rights;
- the new provisions would apply to films made after amending legislation comes into effect; and
- there would be a savings provision for contracts and other arrangements in existence at the time the amending legislation comes into effect, relating to films to be made or completed after the amending legislation comes into effect (similar to that in the UK legislation).

4. The submission is available from our website at [www.copyright.org.au/submissions.htm](http://www.copyright.org.au/submissions.htm).
5. The Bill obviously falls far short of the proposal we made in 2000.

### **Government's election policy**

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6. The Government's election policy *Strengthening Australian Arts* said:

The Coalition Government will amend the Copyright Act to give, for the first time, film directors rights to copyright in the films they direct.

7. The Explanatory Memorandum to the Bill says:

Film directors make a significant creative contribution to the film making process. Australian copyright law does not currently recognise this contribution, while other creators such as screenwriters and composers are recognised. The Government recognises this anomaly and undertook to address this situation on the *Strengthening Australian Arts* election commitment.

8. We assume that the Bill is intended to give effect to the Government's election policy.
9. The policy indicated that the Government would grant more than one right to film directors, whereas the Bill grants only one, very limited right. We had assumed that the Bill would at least provide directors with an opportunity to benefit from income generated by other statutory licences, including the educational use statutory licence in Part VA and the government use statutory licence in Part VII – that is, Option 4 in the Explanatory Memorandum plus the government use statutory licence.

### **No rights in commissioned films**

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10. The amendments as currently drafted would give directors an opportunity to be the owner of the retransmission right only in relation to films which are not commissioned.
11. Under the existing s98(3), copyright in a commissioned film vests in the commissioning party in the absence of any agreement to the contrary. Under the current law, the maker of a film may negotiate to retain copyright in a commissioned film. Proposed new s98(4) would deny directors that opportunity.

## **Our proposed amendments**

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If directors are to be granted only limited rights, then we submit that at least the following amendments should be made to the Bill:

- (a) In proposed new s98(4), replace “If the film is not a commissioned film, then the” with “The”;
- (b) In proposed new s98(6), replace “the right to include the film in a retransmission of a free-to-air broadcast” with:  
“rights subject to statutory licences under this Act including rights subject to Part VA, Part VC and Part VII.”

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