Competition conditions

This information sheet considers some issues you should consider before entering creative competitions.

Who is Running the Competition?

The Good, the Bad and the Ugly – some things you should consider before entering creative competitions.

A preliminary issue to consider before looking at the terms and conditions of a competition is who is running the competition. Ask yourself what type of reputation the organisers have in the industry. Have they held this competition before? Why are they interested in the arts? Can they fulfil their side of the bargain, i.e. to award the prize money, attract publicity, secure the deal they are promising?

Although you may be able to sue organisers if they do not comply with the terms of the competition, it is a lot less hassle to get it right from the start.

Terms and conditions

Meaning of the entry form

When entering a writing, art, music or band competition, or a film or play festival, you need to pay close attention to and understand the terms and conditions of entry. Those terms are commonly included in the entry form for the competition.

By signing an entry form, sometimes simply by making an entry for the competition, you agree to be bound by the terms and conditions (rules) set by the competition organisers. These terms and conditions are a contract. This means that there are legal consequences if you do not comply with the rules.

The consequences of non-compliance (a breach) include being disqualified from the competition, forfeiting your entry fee, or being sued. You may be required to cover all costs associated to any loss your breach of contract may cause to anyone, including the competition organisers if they are sued by someone else because of your breach.

Understanding the terms and conditions

The first thing to do before entering a competition is ensure that you have read and understood what the terms and conditions say. The entry form may merely contain a general statement such as: “I agree to comply with the terms and conditions of entry” and then refer you to another document to review the complete set of terms and conditions. Ask for this other document, read it and seek legal advice should it contain terms and conditions that you do not understand. Be sure that you know what is expected of you, what you can expect from taking part in the competition. In some circumstances, you might be giving up other opportunities by entering the competition, and it is important that you are aware of this and have assessed whether this makes sense for you.

Are you eligible?

There is no point binding yourself to terms and conditions if you do not fit the criteria for eligibility to win the competition. Most competitions have rules on who can enter. For example, the audition rules for Australian Idol state (amongst other things) that you must be between 16 and 31 year old to perform. The ABC Fiction Award 2009 entry form states that you must be over 18, an Australian resident. In addition, employees of the ABC or any person associated with the competition and their

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immediate families are not eligible to enter.

The guidelines for entry to the Tropfest short film festival include requirements that the film is under 7 minutes long, includes the signature item for the year, is specifically made for Tropfest and has not been shown in public previously. In 2006, one film, *Snakepit*, was disqualified after its screening on the finals night when it was discovered that the film fell foul of these conditions.

If you don't win – the fine print

There is no doubt that the cash prizes or prizes that promise more exposure are the drawcard for entrants in competitions. These can be fantastic opportunities for the winners, but you also need to consider the possibility that you do not win, and are still bound by the terms and conditions you agreed to. Prizes of $150,000 for first place seem incredible, but you should consider what rights and opportunities you may have lost by entering if you do not win.

Copyright

The terms and conditions of entry to a competition should refer to the copyright in the work submitted. Put simply, copyright is the exclusive rights to copy and use your work in certain ways.

Under the *Copyright Act 1968* (Cth)the usual position is that a creator of a literary work, artwork, music composition or dramatic work owns copyright in it. For films, the copyright owner is usually the producer and for sound recordings made by unsigned musicians, the copyright owners will usually be the performers and the person who owns the recording medium incorporating the music. There are exceptions to these ownership rules, for example if a work is created by an employee.

Licence or assignment

Merely submitting a work to a competition does not, by itself, require you to give away your copyright. Depending on the purpose of the competition you may have to allow (licence) the organisers to use your copyright for limited things for a limited time. This is, however, very different from giving away (assigning) copyright ownership entirely.

Most competition organisers do not need an assignment of your copyright. If they ask for this, you should question why. What is an organiser going to do with your work, during and after the competition? Why isn't a licence appropriate? If organisers require you to assign copyright, they may plan to exploit your work, and possibly making money from doing so, without your ongoing involvement.

Assignment or exclusive licence

Occasionally the sole point of the competition may be to make money from your copyright. For example, if you submit an image to a T-shirt manufacturer and are told that if you win, your image will be printed onto shirts, the manufacturer may have a good reason for wanting an assignment of your copyright, or at least a licence of your copyright which ensures the manufacturer alone can do this with your image (an exclusive licence).

If organisers ask for and need an assignment or exclusive licence, try to ensure that it is limited to apply to the winning entry (or entries). Some terms and conditions of competitions out there state that you are required to transfer (assign) your copyright in the work to the organisers by submitting your entry, even if your submission is made only a preliminary round concept or draft entry from which finalists are chosen.

Such a term means that even if you don't receive a prize, you lose your copyright and the ability to make money in other ways by permitting others to reproduce, distribute, or make certain uses of your work. You even have lost the right to make a copy of your work for your portfolio, so if you want to do this you would need to make the copy before you give away the

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copyright.

Such a wide assignment term could be very profitable for organisers. They might award only first, second and third prizes but still get hundreds or even thousands of entries to use (including commercially exploit) in any way they like.

Assigning copyright will also restrict an artist's ability to use material in his/her draft or final work in other ways in the future. In doing work based on a similar concept in the future, the artist would have to ask whether copyright (now owned by the organiser) in that (final or draft) work is infringed by the new work? A competition term like this rightly causes a lot of angst to creators.

Entrants should query if the copyright arrangements are acceptable to them in the circumstances. Perhaps such a condition is acceptable to you if the assignment or exclusive licence of copyright is limited to prize winning entries and the prizes are considerable.

Non-exclusive licence

A non-exclusive licence means you permit someone to use your copyright in a certain way but you can give this permission to other people as well. It is far less limiting than an assignment or an exclusive licence on creators, but still needs careful attention.

A non-exclusive licence clause might say something such as: "The organiser can reproduce the submitted work in the exhibition brochure, on the organiser's website and in promotional material for the 2007 competition."

In a situation like this, consider if you mind the organisers using an image of your work on their website forever. If in 10 years time, unconnected to the competition, the organisers want your work on their website, are you happy for them to be able to do this without paying a fee?

Ownership of work

The ownership of the physical work is separate from the copyright in it.

Some competition rules may state something like: "All entries become the property of the organiser." This means that the organiser is not going to return your work. Sometimes organisers keep work because they don't want the expense of returning them. Sometimes they plan to sell the work at a later date and make money from the sale.

Sale of the work

There are competitions where the entries are sold and the entrant receives a portion of the sale price after the organisers have taken a commission. Be wary if the organiser gets to own your work and you get nothing in return. You are losing the opportunity to sell your work after the competition. This could be a big issue, particularly if you spent a lot of resources on it.

Moral rights

The term "moral rights" has a legal meaning in Australia. The moral rights of creators are the right to be attributed, the right against false attribution and the right of integrity. In short, this means that (subject to specific exceptions) creators should be named when their work is used and have the right to not have their work treated in a manner that is derogatory or harmful to their honour or reputation.

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Sometimes, competition terms and conditions require an artist to give up their moral rights. Be cautious if the terms state something like: “Entrant consent to any infringements of their moral rights by the organiser” or “Entrants waive their moral rights.”

One of the main drawcards of the competition may be publicity. In that case, you do not want your work used or exhibited without your name accompanying it. Similarly, it is important to most creators that their work not be altered or placed in a different context in a way that may detrimentally impact their reputation. For example, a band entering a song writing competition in which it gives the organiser rights to use its music for any purpose may not want its song used in an advertisement for, let’s say, a political party or a charity that the band’s members do not support.

Use of your name

In many circumstances, the terms of a competition include a clause to the effect that: “Entrants consent to the organiser using their name, biographical details and likeness in connection with the competition.” This means that the organiser can use any image of you, your life story and your name. It is best for a creator to ensure that such a term is limited in a way that prevents an organiser using his/her name in association with activities or products unrelated to the competition. The entrant might also wish to have the right to approve any image of him/her.

Some competition rules are drafted in a way that gave the organiser the exclusive right to use the name of the entrant. This results in a totally unworkable situation for entrants, who would not be able to allow anyone else to use their name.

Warranties

In addition to referring to your copyright, terms and conditions of competitions will usually require you to guarantee or warrant (promise) that certain things are true. This term is sometimes followed by an indemnity, which is an obligation to cover the organiser’s costs if these promises are false.

The clause may read something like: “The entrant represents and warrants that the work is the entrant’s sole original work, the entrant has the power to grant the rights given under it, the entrant has obtained appropriate releases, including location and performer’s releases, the entrant is entitled to reproduce and exploit any underlying rights in the work, and the entrant indemnifies the organiser against any loss resulting from breach of these warranties. ”

Do not enter a competition unless you comply with these rules as there could be large financial (and professional) consequences if you are later found to be in breach of the representation and warranty. Most organisers will want to see documentation proving that you have the necessary rights, particularly if you become a finalist. An entrant should make sure that they document any releases or licences from the start. It is a lot harder to go back to someone for permission after you have already done the thing that infringes that person’s rights.

Transport and insurance

Usually terms and conditions of entry will include who is responsible for paying the costs of transporting the work to and from the organisers’. For example, the flickerfest film competition provides that filmmakers pay the costs associated with getting the film to the organisers but the organisers will pay the return freight cost.

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Make sure that you also know who is responsible for insuring your work at different stages. If the organisers do not insure the work, you need to consider how much you stand to lose if the work is damaged or lost. How would you cope if the work was damaged or destroyed and incapable of being sold when it is returned to you?

Attendance at an event

Terms and conditions of entry sometimes require that winners attend an event to be presented with their prize. Read the terms and ensure you are aware if it is your responsibility to cover the costs of your attendance or if the organisers will cover the reasonable costs you incur to attend.

If you have other commitments, consider how much notice you need to be able to attend the event, if you are required to. This is very important as sometimes the rules of a competition might state that if you do not attend the award event, you are not entitled to the prize.

If the terms and conditions do not oblige you to be in attendance at an awards night or the showing, performing or exhibiting of your work, consider if you are entitled to attend and at what cost. There is no point being able to enter an event if the admission price is above your means. It may be that an organiser has not considered this issue and may be willing to insert a term allowing you free entry.

Thinking of holding a competition?

If you are considering holding a competition as part of a festival or exhibition you are holding or to promote a private organisation, you may be required to purchase a permit. You can find further information on the regulation of competitions in each of the states and territories at the links below:

- New South Wales
- Victoria / Victoria
- Queensland
- Australian Capital Territory
- Tasmania
- South Australia
- Western Australia
- Northern Territory

Further information

- Australian Copyright Council Information Sheet: *Competitions*
- Contact Arts Law (www.artslaw.com.au), tel. (02) 9356 2566 or toll-free outside Sydney 1800 221 457
- See the National Association of Visual Artists (www.visualarts.net.au) code of practice chapter.
- Contact your industry body, eg. the Australian Society of Authors (www.asauthors.org), Australian Writers Guild (www.awg.com.au), the Musician's Union of Australia (musiciansunion.com.au)

Note

This information sheet is adapted from an article initially published in Art+Law 2006. The article was written by Alison

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