Copyright Licensing for Art Centres

The Copyright Licence Toolkit – Art Centres (**the Toolkit**) contains model best practice copyright licences and policies that cover most uses organisations and individuals want to make of Aboriginal and Torres Strait Islander art works. These resources comply with the Indigenous Art Code and the Australia Council Protocols for Using First Nations Cultural and Intellectual Property in the Arts. They are designed to respect both the economic and moral rights of individual artists, and the Indigenous Cultural and Intellectual Property (ICIP) of the Indigenous communities of the artists.

TEMPLATES IN THE TOOLKIT

Template agreements contained in the Toolkit are available to subscribers as editable word documents. The Toolkit contains:

1. **Copyright Licence Agreement –** a general licence to use an artwork.
2. **Copyright Licence Agreement – Print Publication –** a licence to use an image of an existing Indigenous artwork (e.g. painting, print, drawing, photograph or a still multimedia image) in a print publication (e.g. book, postcard, corporate brochure, book or poster).
3. **Copyright Licence Agreement – Digital Publication –** a licence for using an image of an existing Indigenous artwork (e.g. painting, print, photograph or a still multimedia image) in an online or digital publication.
4. **Copyright Licence Agreement – Merchandise – Art Centre –** a licence for when the Art Centre wants to use an image of an existing Indigenous artwork (e.g. painting, print or drawing) on merchandise the Art Centre will sell.
5. **Copyright Licence – Merchandise – Third Party** – a licence for when a party other than an Art Centre wants to use an image of an existing Indigenous artwork (e.g. painting, print or drawing) on merchandise.
6. **Copyright Licence Agreement – Fabric –** a licence to reproduce the artwork in connection with the manufacture, importation, distribution, promotion, advertising and sale of printed fabric.
7. **Copyright Licence Agreement – Fashion –** a licence for when an Art Centre wishes to manufacture and sell fashion items with the Artist's artwork on them.
8. **Collaboration Agreement – Fashion and Furnishings –** a licence agreement for when a Designer wishes to work with an Aboriginal or Torres Strait Islander Artist or group of artists to produce clothing, textiles and/or furnishings which is based on, incorporating or inspired by the artworks of the Artist or group of artists.
9. **Copyright Licence – Art Centre Logo –** a licence for when the Art Centre wants to create a business logo from an existing Indigenous artwork.
10. **Copyright Licence – Manufacturing Agreement –** a limited licence for when an Artist wants to use an image of their existing artwork (e.g. painting, print or drawing) to enter into an agreement with a manufacturer to produce merchandise and products with the artwork on them.

In addition, the Toolkit contains a number of best practice Cultural and Intellectual Property Policy documents which are useful for Art Centres to consider adopting. They are:

11. **Cultural and Intellectual Property Policy – Indigenous Stories –** a policy for the recording or transcribing of traditional stories told by members of a language group; and includes a consent form to be completed by the storyteller.
12. **Cultural and Intellectual Property Policy – Academic Research –** a policy for research (commercial or non-profit purposes) conducted by individuals or institutions from outside the community which seeks to access an Art Centre or its member artists.
13. **Cultural and Intellectual Property Policy – Festivals and Performances –** a policy for festivals or performances hosted or staged by an Art Centre that involves traditional forms of Aboriginal and Torres Strait Islander cultural and

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traditional expression and knowledge; including a consent form to be completed by a community Elder and the Land Council.

14. **Cultural and Intellectual Property Policy – Filming/Photographing an Art Centre –** a policy for any filming or photography by visitors to an Art Centre; and includes a consent form to be completed by the artist.

Attachment A is a suggested notice to include on the Art Centre's website warning against the use of images of artists' works without permission.

MAIN THINGS TO LOOK OUT FOR IN LICENCE AGREEMENTS

Some of the key matters to consider in a draft agreement, whether drafted by you or given to you by an external party, are:

1. What is the purpose of the licence e.g. it is limited to the specific project you're working on?
2. How long does the licence last for – how many years does the licence apply for?
3. Territory – e.g. Australia or the world.
4. Whether the image or text which is licensed is to be used only by the person it's licensed to (exclusive) or can be licensed to others (non-exclusive).
5. Payments – fees and timing of payment.

LICENCE FEES

It is advisable that Art Centre Managers exercise their discretion about what fees are appropriate and achievable based on their own knowledge and experience.

There will be occasions where it would be in the interest of an artist to waive fees or provide a licensee discount for a copyright licence. For instance, on exhibition and media material promoting the Artist and their work, or for charities or fundraisers the Artist supports. Artists in the Black suggests careful consideration of whether a licence fee may be appropriate for promotional items whether or not for sale and whether or not associated with an exhibition (e.g. give away bookmarks, mugs, keyrings) as such use may be a potential source of income for the Artist. Artists in the Black suggests careful consideration of whether there's sufficient promotional benefit to the Artist to justify waiving a fee. In all situations, there should be proper attribution of the Artist (including relevant Indigenous language groups or communities) and copyright notices.

ART CENTRE SERVICES

As many Aboriginal and Torres Strait Islander artists who belong to community Art Centres have limited business and literacy skills, Art Centres often act as the Artists' agent for copyright licensing. Arts Law has a template Agency Agreement which can be purchased if copyright licensing management is not covered in an agreement between the Artist and the Art Centre. The agreement provides for a commission of between 15%-25% to the Art Centre from any copyright licence fees the Art Centre negotiates on behalf of the Artist for drafting the licence terms and provision of appropriate reproductions of art works and associated biographical information about the Artist to the licensee. Where the licensee (the person being granted the licence) asks the Art Centre to undertake a more active role in licensing activity, the Art Centre may request additional payment for its services.

If the Art Centre prefers to rely on its own template agreements, Artists in the Black recommends submitting those agreements for a best practice review (included in an Arts Law subscription) and discussing any changes which Arts Law recommends in order to meet best practice standards. This process can take up to three weeks so please allow for that in planning. Similarly, if the licensee has its own agreements, Arts Law can review those on behalf of the Artist under its Document Review Service (free for Indigenous artists).

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A licence to reproduce the artworks in catalogues and to promote the exhibition is generally expressly or implicitly included in the Art Centre's consignment and exhibition agreements. The Art Centre can use the template Art Centre and Art Gallery Umbrella Consignment Agreement.

COPYRIGHT COLLECTING SOCIETIES

While some Art Centres are happy to manage voluntary licensing for their Artists, some Art Centres register their artists with one or more collecting societies for copyright licensing matters.

In Australia, the Copyright Agency and the Aboriginal Artists Agency (**AAA**) provide voluntary copyright licensing services for reproduction of a visual artwork in circumstances which require permission of the Artist. Collecting societies charge a fee for their services, and do not necessarily consult the Artist before approving licensing requests. Where licensing is negotiated by a Collecting Society, often the licensee will still need to approach the Art Centre to obtain a high resolution copy of the artwork. For further information see the Copyright Agency website and the AAA website.

While Art Centres may manage voluntary copyright licensing for their member artists, it is still essential to register artists with the copyright collecting societies which have been appointed by the Australian Government to collect resale royalties (Copyright Agency) and statutory copyright royalties (Copyright Agency and Screenrights).

1. **Copyright Agency – Statutory resale royalties**
   The Copyright Agency collects and distributes royalties to artists for qualifying commercial resales of art works for $1,000 or more (inc GST) (the 'resale royalty'). While membership is not required to receive payments, registration makes contacting it easier for the Copyright Agency to contact the Artist for payment.
2. **Copyright Agency – Statutory copyright royalties for educational and government use** The Copyright Agency also collects and distributes royalties for the copying and digital communication of published material (in hardcopy or print form and online or digital form) by educational institutions, and Federal, State and Territory governments and agencies.For further information see the Copyright Agency's website.
3. **Screenrights – Statutory copyright royalties for art works in film or TV broadcasts** Screenrights collects and distributes statutory royalties where an artistic work is used in film or television broadcasts on Australian or New Zealand television.For further information see the Screenrights website.

ATTACHMENT A

[*INSERT ART CENTRE LOGO AND NAME*]

USING IMAGES OF OUR ARTISTS' ARTWORKS

ABOUT US

[*Insert information (about a paragraph) covering:*

- *History of the Art Centre and its remote location.*
- *Description of the Art Centre, referring to it being community operated.*
- *The Art Centre's support of artists including the services and resources it provides to its artist members and its important role in generating income for the artists.*
- *Description of the Indigenous community and its art represented by the Art Centre.*]

THE ARTIST'S COPYRIGHT

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Copyright subsists in the images of our members' artworks. Our artists' copyright is a very important source of income for them, in particular income generated from reproductions of their artworks. It is important that this copyright is respected. Dealing with an image without the authorisation of its owner is a serious breach of relevant customary laws and may also be a breach of the *Copyright Act 1968* (Cth) and other laws.

All uses of an image, including uses to promote the Artist or his/her work, requires the Artist's consent. Examples of use of an image include, but are not limited to, use on merchandise, on promotional material such as gallery brochures and invitations, in catalogues, in books, on book and DVD covers, on cards, or on a gallery's website.

INDIGENOUS CULTURAL INTELLECTUAL PROPERTY

The artwork of the artists of this Art Centre incorporates traditional stories and cultural knowledge. The artwork is created in accordance with cultural protocols. In addition to copyright, those protocols must be respected. It may be that the artwork you are interested in is not available for commercial reproduction because of its cultural significance.

OBTAIN A LICENCE

Should you wish to use (including reproduce) an image managed by us (outside of the general exemptions under the *Copyright Act 1968* (Cth)), it will be necessary for you to enter into a written licence agreement and pay a licence fee. In limited circumstances licence fees may be waived.

[*INSERT NAME OF ART CENTRE*] is authorised to grant copyright licences on behalf of its artist members and has a formal licensing policy in place. If you are interested in using images of our member's works do not hesitate to contact us [*insert contact details*]. We are happy to talk to you about your proposed use.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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