# Putting works online: FAQs for Artists and Arts Organisations

The arts sector has been hit hard with disruption in the wake of the COVID-19 pandemic and is looking at ways of continuing to practice and operate. Arts Law has put together answers to some of the most common questions we've received from artists and arts organisations about showing works online and digitising collections. Contact Arts law if you have any specific legal queries as this information is a general summary only and does not replace getting legal advice

## I am an art centre/gallery and I want to put all the artists' art works on our website to sell them online.  What do I need to think about?

A:  First check the agreement you have with the artist to see what it says about this.  Usually it will say that the art centre/gallery is allowed to do this to promote the artist's works.  If it doesn't, or you want to do something that isn't covered by the agreement, you will need to speak to the artist and seek their permission to use their works in this way.  This should be in writing to minimise the risk of disputes about what was agreed later on.

Arts Law has a template agreement between the artist and the gallery/institution you can use when adding works to a digital collection.

## Are there any Indigenous Cultural and Intellectual Property issues to consider?

Check with the artist to see if there are any traditional custodial interests to respect.

The artist's moral rights need to be respected and they need to be properly credited and the integrity of the original work needs to be maintained.  See the Arts Law Information Sheet on moral rights for more details.

## We work with artists to sell their work. How can we protect their work when we promote it online?

A:  Strategies that some people use to minimise the risk of their works being copied without their consent include: putting a watermark on the work, disabling right click functions, only posting a low resolution image, only using part of the artwork, including themselves in the image of the artwork or including the copyright symbol © as a reminder that the work is protected.

If you are intending to make any amendments to the artwork, even to include a watermark or use a low-resolution image, the artists moral right of integrity needs to be respected. If you are adding a performance piece to your website that involves editing the footage, this could also be derogatory treatment of the work and the artist's moral rights may be infringed. Ideally, any changes to the artwork should be approved by the artist. See more information here.

Note that if you remove someone else's watermark without their permission for the purpose of reproducing the image, you are infringing their copyright.

## I have found images of artworks from Google, public collections or other galleries on the internet. Am I allowed to use them on my website?

A:  The short answer is **no.**  Not without the permission of the person who owns the copyright for the work you wish to copy. Unless the works are in the public domain (i.e. copyright duration has expired – generally copyright exists for 70 years after the artist has passed away or the film was released).  Or the artist has made them available without requiring permission.  It can be risky to assume this has happened, unless you obtain the images from a trustworthy source.

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There are some exceptions to copyright infringement, for example if you wish to use the work for education or research, parody or satire, or criticism and review, however these exceptions are for a limited purpose and you should seek legal advice before relying on them.

A less risky way of sharing the images might be to post a link to the existing website that is hosting them.

## Our organisation wants to show works by deceased artists on our website. Is the process different than for living artists?

A: Where the artist has passed away, control of the copyright will usually pass to specific beneficiaries (such as family members) or to a trustee who has responsibility for the artist's estate. You will need the permission of the beneficiaries or trustee. If the artist had a will, check with the trustee of the will to see if the artist requested that their works or image not be displayed for a period of time after they passed away. If they didn't specifically address this in their will, the family or estate may still know what the artist's wishes were.

## We have recorded interviews with people that we would also like to publish on our website and social media. Are we allowed to do this?

A: This depends on whether there were any restrictions imposed by the interviewee at the time of recording. For example, did they consent to the use of the material for a specified purpose only eg a particular video or story? The content of interviews may be personal information under privacy laws and if you use a person's image without their consent you may open yourself up to legal claims (see the answer to the question below). Ideally, you would have the interviewee sign a release form or at least confirm all the terms of the arrangements by email. Arts Law has template interviewee releases here: https://www.artslaw.com.au/product/interviewees-release-with-payment/ and https://www.artslaw.com.au/product/interviewees-release-without-payment/

## We have video footage and photographs from events, panels, conferences and lectures that we would like to share on our website or social media. Are we allowed to post these recordings and photos online?

A: Provided you have the copyright owner's permission, this is generally fine. The copyright owner of a photograph is usually the photographer and for films and videos, it is the person who made or commissioned the film. There are exceptions to this (for example if someone is an employee and they take photographs as a part of their work, then their employer will own the copyright). If you had an agreement with the copyright owner (whether verbal or in writing) this might affect how you can use this material. As mentioned above, it would be best to have permission from the people appearing in recordings. Arts Law has template releases for subjects of photos, interviews and podcasts on its website.

Photographs or film of an identifiable individual can constitute personal information about that individual under privacy laws. Further, if you are using the photo of a well-known person, care must be taken to avoid misleading impressions being created, such as that the person is endorsing you or your products when they're not. This can be a breach of consumer protection laws. You could also be accused of defamation if the image is used in association with something or someone that could damage the reputation of the person in the photo.

You can contact Arts Law for advice on who the copyright owner of your content might be if you're not sure or have a look at our Information Sheet on consumer law. We also have an Information Sheet on defamation here.

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## I am an artist and am thinking about posting my work on social media. What do I need to think about?

A: If you are posting your artworks on the internet, check the terms and conditions of the platform you plan to use. For example, one of the terms of Facebook and Instagram is that you grant them a non-exclusive right to use your content. Generally this is used by them, so far as we know, for data collection purposes but they can also sub-licence the information to another organisation as well. The licence (the permission you have given the platform) is very broad.

As you've granted a licence to the social media site, this can impact your ability to market the work to someone else if they wish to have an exclusive licence in your work. You can remove the works from the social media platform and then grant an exclusive licence, but you can't be sure what the images were used for before this happened, so best to make the exclusive licence begin after the work was removed.

## I am an artist due to exhibit in an upcoming exhibition that has been cancelled and rescheduled as an 'online exhibition'. What do I need to think about?

A: It's good that the show can go ahead even if it's online. Does your agreement with the gallery say what is to happen regarding online promotion and sales? Do you need to negotiate anything with the gallery or does the agreement cover this situation? Will their commission and expenses be the same? Contact Arts Law if you're not sure about whether the gallery agreement you already have covers all the circumstances.

## I am an artist whose work has been reproduced online without my consent. What can I do about it?

A: You should write to the website that has reproduced your work and ask for it to be removed. Many large websites have a process for issuing a take down notice. See for example:

- Facebook – https://www.facebook.com/help/400287850027717/
- YouTube – https://support.google.com/youtube/answer/2807622?hl=en
- Ebay – https://ir.ebaystatic.com/pictures/aw/pics/au/pdf/help/community/NOCI1.pdf
- Google – https://support.google.com/legal/troubleshooter/1114905?hl=en

If the website doesn't have its own copyright infringement reporting process, Arts Law has an Information Sheet on how to issue a take down notice.

If you know who posted the work, you can also ask them to remove the material from the internet. Contact them or send a letter of demand, although we recommend always seeking legal advice first – see an example of a letter of demand on the Arts Law website.

## We are a performing arts organisation wanting to post videos of our performances online. What do I need to think about?

A: You need to think about who is involved in making the content of the videos eg the performers, the song writers and composers, the scriptwriters, the choreographers. All of these can have legal rights either by law (such as copyright) or by contract.

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First, check whose permission you need (from those involved in the performance and the making of the video). Then check the agreements you have with them to see what they say. If you need consent and haven't got it, then you need to approach the contributor and obtain their consent in writing. Arts Law has a performer's release available or you can get their permission via email as long as it is clear what is being agreed to and covers all the relevant details.

## We are a music organisation wanting to post video and/or audio recording of our performances online. What do I need to think about?

A: Like a performing arts organisation (in the question above), you need to think about who was involved in the making of the performance and the recording to see if they have any legal interests that need to be considered. Different contributors to the performance may have copyright ownership eg the songwriter, composer, performer, producer and video maker.

Check the agreements you have with anyone involved. If you don't have written agreements, what did you agree with the participants regarding the use of the work? It is always worthwhile checking with them to make sure they're okay with it.

**We have worked with the Indigenous Art Code and other peak bodies to develop the additional resource Online Sales Platforms for Indigenous art in the new COVID-19 world.**

**Contact Arts Law on artslaw@artslaw.com.au if you have any questions.**

**Take care. Stay informed.**

20 April 2020

**More resources**

The Australia Council: https://www.australiacouncil.gov.au/about/covid-19/

NAVA: https://visualarts.net.au/advocacy/covid-19/

The art centre peak bodies are providing a lot of information and support to members

I Lost My Gig Australia: https://ilostmygig.net.au/

Beyond Blue has some specific resources on how to look after your mental health if you or your practice has been affected by COVID-19: https://www.beyondblue.org.au/the-facts/looking-after-your-mental-health-during-the-coronavirus-outbreak

**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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*The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.*