



ARTS LAW CENTRE OF AUSTRALIA

ACN 002 706 256 / ABN 71 002 706 256

3 June 2005

Committee Secretary
Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

By Fax: (02) 6277 5794

Dear Sir/ Madam

Inquiry into the provisions of the *Copyright Amendment (Film Directors' Rights) Bill 2005*

Thank you for the opportunity to provide comment to the Senate Legal and Constitutional Legislation Committee inquiry into the *Copyright Amendment (Film Directors' Rights) Bill 2005 (Bill)*.

Introduction

The Arts Law Centre of Australia (**Arts Law**) is the national community legal for the arts. Arts Law provides expert legal advice, education and advocacy services each year to over 2500 Australian artists and arts organisations operating across the arts and entertainment industries.

Arts Law does not represent a particular group with specific interests. Rather, we support the broad interests of creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

As an independent organisation giving legal advice to copyright users, copyright owners and creators across Australia, Arts Law is in a unique position to comment on the balance between competing interest groups when considering proposed amendments to the *Copyright Act 1968 (Cth) (Act)*. Arts Law advocates equitable remuneration for creators. However, we also support fair and reasonable access to copyright material. We believe that this is important not only in fostering creativity but as essential to the intellectual and cultural development of society.

Arts Law supports the previous and recent submissions made by organisations such as the Australian Copyright Council (**ACC**) and the Australian Screen Directors Association (**ASDA**) to the Senate Legal and Constitutional Committee in response to the Bill.

Arts Laws previous submission on film directors and copyright

Arts Law refers to and relies upon, previous submissions made to the Government in 1999

and 2000 supporting the introduction of film directors' copyright.

Comments on the *Copyright Amendment (Film Directors' Rights) Bill 2005*

The current proposed Bill fails to take into account the proposals made by Arts Law, ACC and ASDA between 1999 and 2001.

Arts Law recognises a number of problems with the Bill:

- The Bill grants directors only one, extremely limited right.
- The Bill does not secure access to equitable remuneration for directors from income generated by statutory licences for educational use in Part VA and government use in Part VII of the Act.
- The Bill only gives the director the ownership of the retransmission right in relation to films which are not commissioned.
- The Bill results in the director having no rights in a commissioned film. Section 98(4) in the Bill denies a director the potential to negotiate the retention of ownership of copyright in a commissioned film.

Proposed amendments

Arts Law supports the submissions made by ACC and ASDA in relation to proposed amendments to the limited rights granted under the Bill.

Ultimately, Arts Law submits that the original submissions made by Arts Law, ACC and ASDA between 1999 and 2001 should be considered and the extremely limited rights granted to directors in the Bill should be broadened. However, if limited director's rights are to be granted under the Bill, Arts Law supports the submission of the ACC and agrees and recommends that the following amendments to the Bill should be made:

- (a) In the proposed new s98(4) in the Bill, replace *"If the film is not a commissioned film, then the"* with *"The"*;
- (b) In the proposed new s98(6) in the Bill, 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."

In response to the failure to include a non-transferable right to receive equitable remuneration Arts Law recommends the following amendment to the Act (as set out in Arts Law's submission to the Intellectual Property Branch, Attorney General's Department, dated 13 November 1999):

Right to receive equitable remuneration

Notwithstanding the transfer of a relevant copyright owner's rights in respect of retransmission and other rights to a producer:

- (1) *The ability to manage and assert the right to receive equitable remuneration cannot be assigned by a relevant copyright owner except to a relevant collecting society for the purpose of enabling it to enforce rights on its behalf.*

The right to remuneration is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned for further transmission by any person into whose hands it passes.

- (2) *An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.*
- (3) *References in this section to the transfer of the right to receive equitable remuneration by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.*

- (4) *If a cinematograph film is still in copyright as at [the date the Bill comes into force] (“relevant date”) then;*
- (a) *right holders shall be deemed to have authorised the rental, lending or retransmission of a film where it has been made available to third parties for this purpose before the relevant date; and*
 - (b) *in relation to contracts concluded before the relevant date, the unassignable right to equitable remuneration shall apply only where right holders have submitted a request to that effect by the date 2 years following the relevant date.*

Australian film industry

The Australian film industry plays an important role in the development and expression of Australian culture, society and creativity. Arts Law plays a role in providing advice to many emerging and developing filmmakers; this includes producers, directors, screenwriters, screen composers, actors, designers and visual artists involved in the filmmaking process.

Arts Law submits that granting a right of copyright to the directors of films and a non-transferable right of equitable remuneration are an important development and would provide support and recognition to directors working in the Australian film industry. This proposal, as outlined in previous Arts Law submissions, is vital to protect Australia’s international regard and position and bring Australian copyright law into line with international copyright developments, particularly those in Europe and the UK. This would encourage the growth and reputation of the Australian film industry.

Arts Law looks forward to hearing the outcome of the inquiry into the Bill. We are prepared to expand on any aspect of this submission, verbally or in writing.

Yours faithfully

Robyn Ayres
Executive Director
Arts Law Centre of Australia