



ARTS LAW CENTRE OF AUSTRALIA

Submission to the Inquiry into Australia's creative and cultural industries and institutions including, but not limited to, Indigenous, regional, rural and community based organisations.

20 October 2020

ABOUT THE ARTS LAW CENTRE

The Arts Law Centre of Australia (**Arts Law**) welcomes the opportunity to respond in respect of Inquiry into Australia's creative and cultural industries and institutions including, but not limited to, Indigenous, regional, rural and community based organisations.

Arts Law is Australia's only community legal centre for the arts sector. Our area of expertise is the provision of legal advice regarding intellectual property (**IP**) matters affecting artists and arts organisations. Arts Law provides business advice, professional development resources, education and advocates on law and policy reform for the benefit of the creative sector.

Artists in the Black (**AITB**) is a specialist program at Arts Law and facilitates legal advice and information about legal issues for Aboriginal and Torres Strait Islander artists and communities. We also advocate on issues relating to cultural appropriation. Our experience is that Indigenous Cultural Intellectual Property (**ICIP**) does not have adequate protection under copyright law and that Indigenous artists are in a sadly unique and vulnerable position in relation to enforcing IP rights in their works which are often of significant cultural and community value.

Arts Law is a non-profit organisation which derives no direct financial benefit from the trade in the works and IP rights of the artists we advise. This positions us to provide independent comment, though clearly with artists' interests foremost in our reasoning.

Our comments:

Arts Law broadly supports the Inquiry's attention to the relevant economic factors in the current creative climate in Australia, particularly post pandemic. As a service organisation providing legal advice to Australian creators and businesses, it is our experience that:

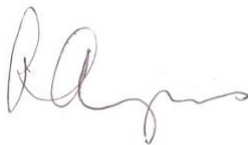
1. Australian creators require additional support in the form of enhanced business and legal skills to manage the various economic opportunities which currently exist, and those which might arise in the future. An example of this is that during COVID-19 many creative businesses contacted Arts Law for further information about leveraging their copyright for online licensing opportunities (opportunities to make money from their copyright). It is important that governments continue to grow their support for "enabling services" which facilitate the creative sector's prepared and positive response to the various economic opportunities available.
2. It is imperative if the creative economy is to continue to grow and develop that creator's copyright is considered as an important and relevant source of income in the sector, and that this interest (or the licensing fees associated with its use) are not

further eroded by policy or reform which, for example, broadens the ability for users of copyright to “use for free” rights or interests which they currently pay for.

3. Cultural expression by Indigenous creators is not currently adequately protected by law, or valued generally or specifically in agreements commonly entered into by Indigenous artists. While it is encouraging to see that the Australia Council has just released updated Indigenous protocols, without legal rights vesting in Indigenous Cultural and Intellectual Property (ICIP) interests, the economic value of those interests remains uncertain, unenforceable and underrepresented in broader economic analysis. Arts Law advocates for the sui generis protection of ICIP as a means of not only protecting Indigenous interests in expressions of culture and heritage, but also as a potential means of monetising those interests, where Indigenous creators and cultural practitioners seek to do so.

CONCLUSION

The undersigned writers are pleased to discuss this submission or any queries at your convenience, by emailing rayres@artslaw.com.au copying sderry@artslaw.com.au.



Robyn Ayres

Chief Executive Officer

Arts Law Centre of Australia



Suzanne Derry

Director, Partnerships and Programs

Arts Law Centre of Australia