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23rd August 2004

Mr Mark Taylor
General Manager
Arts and Regional
Department of Communications, Information Technology and the Arts
GPO Box 2154
Canberra ACT 2601

Dear Mr Taylor,

RE: Submission in response to the Department of Communications, Information, Technology and the Arts Discussion Paper *Proposed Resale Royalty Arrangement*

Thank you for providing ANKAAA an opportunity to provide comment on the proposed Resale Royalty Arrangement Discussion Paper provided by the Department Of Communications, Information, Technology and the Arts.

BACKGROUND:

ANKAAA (Association of Northern, Kimberley and Arnhem Aboriginal Artists) is the peak advocacy and support agency for Indigenous artists and 32 Indigenous owned Art Centres located in the Top End. Members of ANKAAA are Indigenous owned incorporated Art Centres, Art Centres affiliated with Local Community Government Councils, and some individual Indigenous artists who are not affiliated with an Art Centre (the majority of whom are Darwin based). ANKAAA membership is organised into four (4) regions including the Tiwi Islands, Kimberley, Arnhem Land and Darwin/Katherine regions. ANKAAA provides services to its members to promote, resource, educate and protect the work of Indigenous artists and Art Centres. ANKAAA is an incorporated Aboriginal Association, governed by an Indigenous Executive Committee of twelve (12) members, three (3) members from each of the four (4) ANKAAA regions.

ANKAAA has been actively involved with the Australia Council who set up a core group of organisations specifically relating to Indigenous Intellectual property and resale Royalty issues. This group includes ANKAAA, DESART, Copyright Agency Limited, Australian Performing Rights Assoc, Screenrights, Australian Copyright Council, Arts Law, DCITA, NAVA, ATSI (National office), Viscopy and of course Australia Council representatives. All organisations having direct involvement in Indigenous Intellectual Property (IIP). As part of this network ANKAAA has been involved in the discussions relating to the proposed Resale Royalty Arrangement. As a result of these discussions it is clear that many of the organisations have strengths in the different areas therefore the ANKAAA comments paper will be focusing on the

benefits to Indigenous artists, their families, heirs and communities through the introduction of a Resale Royalty arrangement. ANKAAA's response makes reference to submissions provided by NAVA, Copyright Council, Arts Law Centre for Australia and Jumbunna Indigenous House of Learning (UTS).

Please read this comments paper in conjunction with the more technical and other practical orientated papers supplied by Arts Law Centre for Australia, Australia Copyright Council, Viscopy and NAVA.

The role of Art Centres within remote and regional communities is varied and includes social, financial, and community orientated projects. The Art Centres offer services to their members, who are Indigenous artists. Currently Art Centres have a role in monitoring and negotiating (in collaboration with the artists involved) copyright arrangements with third parties. This includes all aspects of Indigenous Intellectual property. Art Centres are essential in providing up to date information regarding copyright, licence agreements, Individual moral rights, market advice. Art Centres also ensure that all works are identified and the artist is acknowledged through "Certificates of Authenticity" and artists' profiles. The processes currently in place and practiced by Art Centres are for the protection of the copyright and moral rights of the artists through their designs and stories.

COMMENTS:

ANKAAA has a membership of 32 Art Centres all located in remote or regional communities across the Top End and Kimberley region. Access is a very big issue when working such communities especially during the wet season when weather is a very large factor. Therefore Consultation is not always achievable if telecommunications are not accessible.

1. Should Australia introduce a resale royalty arrangement? What are your primary reasons for your support or lack of support for such an arrangement?

YES – any financial return to Indigenous artists and family is a positive. ANKAAA has supported the recommendation in the Myer Inquiry and other commissioned papers through NAVA. Resale royalty should be an economic right similar to copyright legislation and moral rights for the artist.

2. What should be the primary objectives of a resale royalty arrangement in the Australian environment?

The artist benefiting from the resale/successive uses of their work. Initial sale prices of the work are usually lower than that of the resale prices (based on success/recognition of the artists profile over time). At each resale of a work the trader at the time benefits while the artist does not. The resale right gives the artist a small return to the artist so they can benefit.

3. Who do you consider should be the principal targets of a resale royalty arrangement and why'?

Principal target for the introduction of resale royalty would be the artist and immediate family if the artist has passed away.

4. What kind of resale royalty arrangement would best deliver benefits to the intended beneficiaries and why'?

- A fully legislated scheme;

A fully legislated scheme is the only way to deliver resale benefits to artists to ensure it handled fairly and reliably through out the Industry. It is also consistent with the Berne Convention.

- industry self-regulation; or

This may not work as there could be resistance to key stakeholders in the distribution of any resale royalty – there would also be no consistency with in the industry

- contract-based resale royalty.

Again a voluntary process which would pose the above issues with industry regulation

5. Are there any unique features of the Australian art market which need to be considered in designing a workable resale royalty scheme?

For Indigenous artists access to the art market nationally and internationally therefore a fully legislated scheme would ensure all artists are fairly acknowledged through resale royalty. Other access issues include literature and numeracy disadvantages across the regions therefore a fully legislated would avoid legal and trade practice issues that could arise.

Indigenous art sector has contributed to the overall growth of the Australian art market. Indigenous artists should be supported in this practice and recognized for their contribution to the market which has seen a substantial growth particularly in Auction resale's recently.

6. What are the most important principles underpinning the choice of model or the form of resale royalty arrangement? (e.g. a scheme that provides royalty payments to the greatest number of living artists, or limits the impost on small business, or excludes works that decrease in value, etc)

That the artist has the right to earn a royalty each time the work is resold through "public" sales like auction houses, commercial galleries and agents/dealers at this stage. The royalty scheme should provide the highest payment to the greatest number of artists with the lowest possible level of admin costs.

7. What works should be covered by the arrangement and why'?

All artistic works produced by Indigenous and non-Indigenous artists.

8. What duration should apply and why'?

This should tie in with Australian copyright law – life plus 50 years (current legislation) or if change occurs with the adoption of the Australian US Free Trade Agreement life + 70 years.

9. Should artists be able to assign, waive or sell the resale royalty in their works, and why?

Strongly advocate non transferable or waivable right on resale royalty by artists. Similar to current advocacy on not transferring Moral rights of an artist – resale royalty should be an inherent right.

10. Should there be a threshold level for the resale of works, and if so at what level should that be set and why?

Would recommend no minimum threshold however admin costs would be incurred in the handling of the resale royalty therefore it may need to be set at the lowest possible rate, however this may need to be investigated by the body that could handle the collecting and distribution of the resale royalty.

11. What rate of royalty should apply and why? Also, should the royalty be set as a flat rate or on a sliding scale and why?

For ease of administration a flat rate of 5% (as previously recommended by NAVA) would be recommended. However a sliding scale arrangement as per the EU countries do ensure higher return to artists at the lower dollar sales.

12. What type of organisation should administer any arrangement and what factors should be used to assess and ensure the performance of such a body? (e.g. highest rate of return to artists, transparency of process, administrative efficiency, low costs etc.)

A collecting agency that could show a high level of transparency and efficiency in the timely distribution of the funds to artists. The Agency would need to be subject to government audit and annual reporting. ANKAAA supports the declaration by the Attorney-general of a not for profit collecting society as the administration body for resale royalty.

13. If you do not support a resale royalty, do you consider that alternative support arguments are more appropriate? If so, what kind?

ANKAAA supports resale royalty as an additional mechanism for equity within the Indigenous art industry but recognizes that more support is necessary.

14. What do you consider is the likely impact of your preferred position on the possible groups affected and on the Australian art market?

Indigenous Artists, families and their communities would stand to benefit from ANKAAA's preferred position regarding the implementation of a fully legislated resale royalty scheme.

15. Do you have any other issues'?

That the government progress the issue of implementation of resale royalty and continue consulting with the broader industry stakeholder in developing legislation that would stand to benefit and recognise the ongoing contribution of Indigenous artists to the Australian Art Market both national and international.

Thank you for allowing ANKAAA to provide comment to provide comment on the proposed Resale Royalty Arrangement. ANKAAA would welcome further opportunity to discuss this comment paper and involvement in the ongoing development and consultation process of any Resale Royalty legislation.

Please do not hesitate to contact me in relation to any aspect of this paper and the implementation of Resale Royalty in relation to Art centres and current practices.

Yours sincerely,

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