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Growing the Indigenous Visual Arts Industry

About Copyright Agency

Copyright Agency collects fees and distributes royalties to creator members for the reuse of their text and images. Our members are authors, artists, cartoonists, illustrators, journalists, photographers, playwrights, poets, publishers and surveyors.

We manage the [educational copying schemes](#), the Commonwealth, State and Territory [government](#) copying schemes, the [Resale Royalty scheme](#) for artists, and the [special provisions](#) for institutions assisting people with print disabilities – all by appointment by the Government or by the Copyright Tribunal.

Our visual arts team specialise in [licensing artworks](#) for a wide range of uses including publishing, merchandise, fashion, architectural uses and more. Many of our 13,500 visual arts members are [Aboriginal and Torres Strait Islanders](#), some directly and others via art centres.

Businesses demonstrating best practice governance, secure [commercial licences](#) from us for improved compliance and seamless work flow.

We have agreements with [International Affiliates](#) to license the use of foreign content here, and collect licence fees for Australian content used overseas.

Copyright Agency provides philanthropic support to Australia's cultural community through our grants program, the [Cultural Fund](#) and presents the [John Fries Award](#)

Sustainable Growth

1. What practical actions do you think will assist to rebuild the market in a sustainable way?

Any practical actions to assist in rebuilding the market in a sustainable way should be informed by those who are directly affected and in need of assistance, including artists, art centres and art market professionals. Understanding the challenges faced by the different parties will guide the solution/s and given that COVID-19 has affected many people and organisations in many different ways, the practical actions needed are likely to be varied. We acknowledge this

consultation as part of that process and support reaching out to those stakeholders that may be under-represented in the responses, in particular artists not associated with an art centre.

Our suggestions for practical actions for sustainable growth include:

- Support online engagement: While it has been of increasing importance to businesses over recent years, COVID-19 brought to prominence, the necessity for reliable internet access and having a digital presence through which to engage with customers. With the growing demand for Aboriginal and Torres Strait Island artwork both locally and internationally, supporting artists and art centres with this access and the capacity to develop and maintain websites, social media and create the associated marketing materials and programs is essential.

As an example of the shortfall in many art centres, we have recent experience engaging with art centres to participate in our on-line image bank [IMAGES](#) , so that licensing revenue can be grown through the provision of an image and licence together. While a small number of art centres have taken advantage, there is a consistent message from many of the lack of resources to prepare images and metadata.

- Expanding the resources available to drive education, awareness and best practice in the visual art market including additional funding to the Indigenous Art Code.
- The suggestions as per our submission to the “Inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia”. The activities include a legislative component plus education and promotion.
- Extending the Resale Royalty Scheme with international reciprocity

Sustainable growth will also be supported by the activities suggested in the remainder of this document, which contribute to the increasing professionalism of the sector and a more ethical and transparent environment for artists.

2. What do you like or dislike about how the market currently works?

We have seen many improvements in the market over the last ten years. There is more awareness of issues affecting artists and growing understanding by some artists of how their works move through the market and their rights.

Further improvements can be made in relation to copyright licensing – specifically to rectify the poor or absent licensing arrangements for Indigenous artists. As ventilated in the “Inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia”.

We regularly hear from artists who are unsure of their sales arrangements with art dealers and at what point a resale royalty will be applicable. We continue our work to educate and inform on the Resale Royalty Right and how it works. Additional information and support to artists

about the various sales arrangements they can enter with art market professionals for the sale of their work would be valuable.

3. What questions would you like answered in the Productivity Commission study?

When studying the nature and structure of the Indigenous arts and crafts market, to address deficiencies in the market and opportunities, areas that might be included, in no particular order, are:

- What is the value of the fine art market for Aboriginal and Torres Strait Island fine art?
- What is the value of Aboriginal and Torres Strait art souvenir and gift market?
- How independent artists (those not attached to an art centre), might be better supported?
- What barriers are there to increasing participation by Aboriginal and Torres Strait Islanders in the management of art centres?
- What barriers are there to the development of Indigenous-owned and operated businesses in the industry?

We note there have been previous attempts to collect data on the value of the market and this has proved difficult.

4. Different words have different meanings for different people. Should we use ‘Aboriginal and Torres Strait Islander people’ or ‘First Nations people’ in the Action Plan?

Through engagement with our members and other stakeholders, we have formed the view that when speaking in a general context and with reference to a larger group, the preference is to use Aboriginal and Torres Strait Islander rather than First Nations; however we do recognise that such terms are used interchangeably by a range of people and organisations.

If there is the opportunity to identify the particular people or country being referred to, we suggest that steps are taken to identify and specifically mention that, rather than using the broader term ‘Aboriginal and Torres Strait Islander’. We recognise this may not be practicable in all instances, but where applicable, that work is undertaken to identify the particular group and pronunciation.

5. What do you understand ‘authentic Indigenous art’ to mean? What type of artwork should be included in this definition?

The Copyright Agency provided a written submission dated 3 November 2017 to the House of Representatives Standing Committee on Indigenous Affairs inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia. In that submission and in response to the inquiry terms of reference, we proposed the following definition of “authentic art and craft products and merchandise” as:

“Authentic art or craft product or merchandise is that which has been produced with the authority or permission of the relevant Indigenous artist and/or community.

Of great concern to Aboriginal and Torres Strait Island people is the misuse of their culture through the mishmash of Aboriginal and Torres Strait Island designs onto one

product, mixing cultural groups/icons/symbols inappropriately. This would be avoided if the definition above was applied and enforced”.

The Copyright Agency supports the general concept that to be considered ‘authentic’ Indigenous art should either be made by, or under licence from, an Aboriginal and Torres Strait Islander artist.

Capacity Building

6. What skills do you think are important in the industry? What ways do you build those skills? What would help you to build those skills?

The Copyright Agency supports the building of skills and knowledge for artists, arts workers and art market professionals.

For artists, skill development includes those that assist in establishing their own artist practice and ongoing professional development through exposure to other artists and art forms – we see art centres providing this type of support already and support its ongoing delivery. Knowing that the development needs will vary for artists depending on their location, stage of career, type of practice and whether they are with a newly-established or long-standing art centre, it is important that artists have the opportunity to directly inform Government about their own needs and development and that any training is delivered in a culturally appropriate way.

For arts workers, skill development includes how they support artists in the development of their arts practice, business administration, plus marketing and digital skills which are an increasingly key element in the success of an art centre. Succession planning and development to step up to the Art Centre Manager role should be available if desired.

And for all (artists, arts workers and art market professionals):

- The importance of Indigenous Cultural and Intellectual Property (ICIP) rights. This is required not only from a general standpoint, but also how ICIP can be implemented into the business arrangements with artists.
- Managing artworks in the digital space, including how to take steps to mitigate unauthorised use of images of artworks they are promoting on behalf of artists.

The ways in which we build those skills, is to provide information to artists and art centres on intellectual property rights and the management of artists’ works to benefit from those rights, including copyright licensing and the Resale Royalty Right. We do this through information on our website, information sheets, presentations and meeting at art fairs, artists’ studios and art centres. This information is generally delivered to Aboriginal and Torres Strait Island artists by our Indigenous Engagement Manager, supported by other experts in our visual arts team. Our licensing, resale royalty and member services team are also available at all times to take questions and assist.

7. Do you get the support and materials you need from your art centre?

Not applicable.

8. Is there more that can be done to encourage the development of Indigenous-owned and operated businesses in the industry?

Yes, more can be done to encourage the development of Indigenous-owned and operated businesses in the industry. We support the choice that Aboriginal and Torres Strait Islander people may wish to exercise in operating and managing their own businesses within the industry. The availability of this choice also extends to those Aboriginal and Torres Strait Islander people who may wish to be art centre managers.

We suggest direct engagement with existing Indigenous-owned and operated businesses, and those wishing to establish their own businesses, to understand the challenges and barriers faced and the role that Government can play in addressing those issues.

Access to Market

9. What can be done to assist artists to better connect with the art market?

Artists would benefit from more information on the art market, how it operates, their options for trading terms of their fine art sales, what opportunities exist for licensing and other income streams. Our experience with the Resale Royalty Right has shown us that providing artist with information about their resales has meant for some that they have a better understanding of the value of their work in the market and how their work moves through the market. This has resulted in their making more informed choices about how they work in the market.

10. How can digital technologies overcome the challenges of remote locations?

Our experiences through Covid-19 have shown how essential and effective digital technologies are in keeping us connected as individuals, communities and as a healthy economy.

In remote locations, we understand there can be issues with connectivity to the internet. It is important that artists in such locations are connected at a level sufficient to support basic needs such as online commerce and information access. The ability to interact with other technologies online, for example health services, should also be the goal. If basic internet access, connectivity and understanding of online spaces cannot be achieved, digital technologies will not be used to their full potential and overcome the challenges of remote locations.

11. How significant has selling artwork online been for your art centre through COVID-19? How could you improve how your art centre sells work online?

While this question is not applicable to the Copyright Agency, we offer as evidence of the importance of the online environment in driving positive engagement and sales, the significant

lift in copyright licensing activity and enquiries we received from individuals and organisations from March onwards.

Enquiries came from new and existing customers and for existing customers, while some of their uses required new licences, others were covered by licences they already held with us and it enabled a smooth, swift transition to a digital only engagement, knowing that the artist/rightsholder was correctly acknowledged and remunerated.

We also noted during this time, the positive engagement with all customers who like ourselves were keenly aware that for many artists, their copyright licensing and resale royalty incomes may have been their only in tact revenue stream, while exhibition, teaching or supplementary incomes were impacted by the pandemic. Customers worked proactively with us to keep payments flowing to artists.

We know through discussions with art centre members that they had varied experiences with online sales. Their success or otherwise was dependant on the quality of their internet access, if they had a user-friendly and up-to-date website for customers to engage with and their capacity to maintain that and engage in marketing activity.

12. Is there more that needs to be done to engage with the international arts market as well as tourists in Australia?

Ongoing education and interaction with domestic and international tourists is needed. While there may be some pockets of domestic tourists who are more aware of the issues facing Aboriginal and Torres Strait Islander artists, there are many others who do not. Increasingly International and domestic tourists are seeking to engage with Aboriginal and Torres Strait Islander people and culture, so it is a prime opportunity to educate and inform.

Information should include the diversity in Aboriginal and Torres Strait Island culture and how this is reflected in the various styles of artwork, dispel the myth of the dot painting as they only form of Aboriginal art and demonstrate how inappropriate the random grouping of diverse styles and iconography onto one product (as we see on some inauthentic product) is. It should also include what to look for and what questions to ask to ensure purchasing an ethical product, plus provide reliable sources for additional information.

It would be ideal to see the messages and information delivered via in-flight films which are first and foremost art and culture documentaries, so that the art and culture carries the story but the important ethical messages are also delivered.

13. If overseas activities were to be supported, would this assist in engaging in the international market and do you consider this should be a priority?

The Copyright Agency continues to advocate for the implementation of international reciprocity for the Visual Artists Resale Royalty Right. The Australian scheme was introduced with this in mind and the implementation of reciprocal rights would ensure that Aboriginal and Torres Strait Islander artists receive the benefit of the resale of artworks that occur internationally.

Legal Protections

14. Is the current framework protecting Indigenous cultural expressions good enough?

No, the current framework for protecting Indigenous cultural expressions is not good enough. There are currently various pieces or amendments to State and Federal legislation that relate to specific parts of Indigenous cultural expressions, however there is no law that comprehensively and deliberately recognises and protects Aboriginal and Torres Strait Islander cultural expressions.

As identified throughout the House of Representatives Standing Committee on Indigenous Affairs “Inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise for sale across Australia”, specific legislation has been called for to ensure recognition and protection of Indigenous cultural expressions. The Copyright Agency recognises and supports Government’s intention to explore the introduction of standalone Indigenous Cultural and Intellectual Property legislation.

Alongside the Arts Law Centre of Australia and the Indigenous Art Code, the Copyright Agency called for a specific amendment to the Australian Consumer Law to address the issue of inauthentic art and craft product in the short term. We note that the amendment to law was not included as a recommendation in the inquiry and therefore not considered by Government. We maintain the position that an amendment to the Australian Consumer Law as proposed is an effective and strong way to prohibit the creation and supply of fake art and craft products in the souvenir market.

15. Should there be a mandatory Indigenous Art Code? If so, how do you think that should work?

We support the Indigenous Art Code’s position in relation to a mandatory Indigenous Art Code.

We understand that a mandatory Indigenous Art Code also requires the participation of regulators such as the Australian Competition and Consumer Commission, and for that to be effective, additional funds will be required to resource the work, plus support and education will be needed for those who are responsible for enforcing a mandatory Indigenous Art Code. We also understand enforcement by the ACCC is subject to the regulator’s own priorities at any one time, which may not always be breaches of one of the mandatory codes, including a mandatory Indigenous Art Code.

Before moving to a mandatory code, it may be worthwhile to fully test the efficacy of a voluntary code by providing additional funding that enables delivery of the outcomes Government and stakeholders seek. It would be useful to revisit those expectations to ensure engagement by the market in any ramping up of Code activity. Note: This in no way is intended to negatively comment on the work of the Indigenous Art Code which has done an excellent job with the resources available.

16. Do you like the idea of a certification trade mark scheme for authentic products? How do you think it should work?

We understand that many people view this as an attractive solution and feel an effective certification trade mark scheme could give consumers comfort in knowing they are buying authentic products. We also understand that IP Australia is currently exploring the viability of such a certificated trade mark system.

We believe however, the challenges in establishing and maintaining an effective certification trade mark scheme are significant and it is likely not to be effective, as seen in prior attempts. We are also concerned by issues of access to the system and the burden placed on artists in this. For more detail of our concerns, we refer you to the Joint response provided by the Indigenous Art Code, Arts Law and the Copyright Agency to the “Report on the impact of inauthentic art and craft in the style of First Nations peoples”

17. Do you like the way the Resale Royalty Scheme works?

In our experience the scheme is working well and achieving its objectives of providing artists with recognition of their on-going rights in their art and an additional source of income. The scheme encourages greater clarity and documentation of arrangements which is of benefit for both artists and art market professionals. The information provided to artists about resales of their works enables them to make more informed decisions about sales of their works.

As at mid-December 2020, the scheme has generated:

- over \$9 million in resale royalties for more than 2,075 artists
- 65% of the artists who have received a royalty are Indigenous Australians and they have received 38% of the royalty
- Of the 50 artists who have received most money under the scheme, 18 are Aboriginal or Torres Strait Islander
- Of all the artists receiving royalties, over 35 per cent reside in the Northern Territory and central Australia – demonstrating the regional and remote impact of the scheme.

More information on the scheme is available at: resaleroyalty.org.au

Our view is that the structure of the scheme is basically sound; however our ability to manage compliance for the scheme would be enhanced through Inspection powers.

Inspection powers:

The collecting society has no legislative power to inspect the records of sellers, buyers, art market professionals or other agents to determine an eligible resale, the amount of any resale payable on a commercial resale or the liability for that royalty. We can require this information from these parties and, if they do not comply, we can apply to the Federal Court for a penalty against the relevant party. We note that the penalty provision does not empower the court to order compliance with a request for information.

In our view it would be useful to have the power to inspect records, rather than having to enforce compliance through the notice and penalty system provided. The power should extend to the right to inspect records related to information which is required to be given in a section 28 notice of commercial resale and not just the limited amount of information that can be requested under a section 29 request.

A possible model for our suggested amendment is the inspection provisions that form part of the educational statutory licence in the Copyright Act administered by Copyright Agency. We have found these provisions to be a useful tool in managing the statutory licence, though rarely used.

18. Is there more that could be done to increase awareness of moral, cultural and intellectual property rights?

Yes. We submit that the task of educating all those in the Indigenous visual arts industry of the importance and impact of moral, cultural and intellectual property rights needs to happen on an ongoing and national basis. We suggest that all those involved in the market should be included in this education process, with Aboriginal and Torres Strait Islander artists given priority. Education and awareness building should be tailored to the different positions within the industry – artists, art centres, art workers, art dealers, collectors, institutions and consumers. Please see point 6. for some of the specific topics that should be covered.

There are a range of organisations that currently work in this area, already providing information to various stakeholders in the visual arts industry. We support working with those existing organisations to enhance/expand what they are delivering.

19. How do you think that Indigenous Cultural Intellectual Property protections could work in practical terms?

Indigenous Cultural Intellectual Property (ICIP) exists in all Aboriginal and Torres Strait Islander works and cultural expressions. The Copyright Agency recognises and supports Government's intention to explore the introduction of standalone Indigenous Cultural and Intellectual Property legislation. In addition to that stand-alone legislation, we see other practical protections as:

- A specific amendment to the Australian Consumer Law to address the issue of inauthentic art and craft product (as mentioned in point 14). We see this as a practical solution while specific ICIP legislation is created and beyond.
- Cultural protocols for the dealing or use of artists' work in any sale or licensing of their works. While not having legal effect, the protocols are important in shaping interactions and engagement between artists and those who wish to deal with their works. The Copyright Agency recognises and supports the "Protocols for using First Nations Cultural and Intellectual Property in the Arts" by Terri Janke and the Australia Council for the Arts. We also worked with Ninti One Art Economies and a group of industry experts – including artists, art centres, manufacturers, distributors and retailers – in Melbourne in April 2018 to discuss the successes and challenges in bringing products featuring Aboriginal and Torres Strait island artworks (predominantly gifts and homewares) to market. A series of [Guides](#) was created by Ninti One on the practices

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behind good licensing, with information for the different groups within the licensing supply chain.

Thank for the opportunity to contribute to this consultation.

A handwritten signature in black ink, appearing to read 'Judy Grady', with a stylized, cursive script.

Judy Grady
Manager, Visual Arts

A handwritten signature in blue ink, appearing to read 'Stephanie Parkin', with a stylized, cursive script.

Stephanie Parkin
Indigenous Engagement Manager