

Submission to the UNHR Special Rapporteur on the impact of intellectual property regimes on the enjoyment of right to science and culture, as enshrined in particular in article 15 of the International Covenant on Economic, Social and Cultural Rights

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THE ARTS LAW CENTRE OF AUSTRALIA

The Arts Law Centre of Australia (**Arts Law**) was established in 1983 and is the national community legal centre for the arts. Arts Law provides expert legal advice, publications, education and advocacy services each year to over 2,500 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients

Our clients reside in metropolitan centres and in regional, rural and remote parts of Australia. They are from all Australian states and territories. Our client base is multi-cultural, Indigenous and non-Indigenous.

Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists. Each year Arts Law provides legal advice and other services to approximately 2,500 artists and arts organisations. Typically copyright issues comprise about 60% of all problems about which we provide advice.¹

Our essential approach to copyright reform issues

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) (**Copyright Act**). Our perspective here is in keeping with our 'artists first' policy. That policy is implemented in our protocols as to circumstances in which Arts Law will provide advice or may decline to provide advice. That is, Arts Law's policy is to advise on matters that relate to, or affect the rights of individual artists. In situations where there is the potential for conflict between the interests of individual artists and those of arts organisations and other entities, Arts Law will normally not advise those arts organisations and other entities so as to avoid conflict with the 'artists first' policy.

Arts Law advocates for artists to be rewarded for their creative work so that they can practise their art and craft professionally. We also support fair and reasonable access to copyright material. We believe that balance is crucial in fostering creativity and is essential for the intellectual and cultural development of society.

The Arts Law welcomes the opportunity to provide this submission to the Special Rapporteur on the impact of intellectual property regimes on the rights to science and culture. In this submission, we will focus on the right of the rights of indigenous peoples and local communities to enjoy and access their cultural heritage.

¹ 1,487 of the 2,444 legal advice files in 2013 included copyright as one of the areas Arts Law advised on (Arts Law Annual Report 2013, p. 20).

Arts Law supports the submission of the Australian Copyright Council

Arts Law agrees with the submission of the Australian Copyright Council to the Special Rapporteur. The following paragraphs from the submission of the Australian Copyright Council also reflect the values of Arts Law:

“We believe in the values copyright laws protect: creative expression and a thriving, diverse, sustainable, creative Australian culture. A society's culture flourishes when its creators are secure in their right to benefit from their creative work and when access to those creative works is easy, legal and affordable. Copyright effectively and efficiently enables this balance between protection and access.”

“In our view, “access to culture” is most meaningful where it refers to the ability to connect with content of cultural, social and educational significance or value.”

Protection of ‘Indigenous Knowledge’ or ‘Indigenous Cultural and Intellectual Property’ (ICIP)

Arts Law provides an Indigenous arts law service - *Artists in the Black* (AITB)² and provides information and advice to Aboriginal and Torres Strait Islander artists and community arts centres including via the *Solid Arts* website.³ The aim of AITB is to increase access to legal advice and information about arts law issues for Indigenous artists and communities. We therefore feel we are in a unique position to address the concerns of Aboriginal and Torres Strait Islander artists and community arts centres as to the adequacy of protocols to manage ‘Indigenous Knowledge’ or ‘Indigenous Cultural and Intellectual Property’ (ICIP) and the potential for better protection to be achieved through reform of the existing IP legislation of Australia.

In the request for submissions the Special Rapporteur expressed an interest in learning more about the concrete obstacles met by artists, authors and creators to benefit from the protection of the moral and material interests resulting from literary or artistic production of which he or she is the author. To meet this request for specific examples of obstacles, Arts Law provides to the Special Rapporteur a copy of a submission made on 14 June 2012 to *IP Australia*, which administers Australia's intellectual property rights system.⁴ In this submission Arts Law provided some examples of situations in which the assistance of Arts Law has been requested and in which the provision of effective help to Aboriginal and Torres Strait Islander artists is hampered by the existing IP regimes.

FURTHER INFORMATION

Please contact Robyn Ayres if you would like us to expand on any aspect of this submission, verbally or in writing. Arts Law can be contacted at artslaw@artslaw.com.au or on +61 (02) 9356 2566.

Yours faithfully,

Robyn Ayres
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² <http://www.aitb.com.au/>

³ <http://www.solidarts.com.au/>

⁴ <http://www.ipaustralia.gov.au/>