1. About Copyright Agency

Copyright Agency is a member-owned, not-for-profit organisation founded by Australia’s authors and publishers in 1974. We now have more than 20,000 members, who include writers, artists and publishers.

We have been appointed by the Australian Government to manage the statutory licence scheme in the Copyright Act that enables educational use of content in return for fair payment to content creators, and a similar scheme for government use. We also offer licences, as agent for our members, for other uses of text and images, such as corporate use.

In addition, we were appointed by the Australian Government in 2010 to manage the new artists’ resale royalty scheme.

We pay the licence fees we collect to the rightsholders whose content has been used. In 2010–11, this totalled more than $121M. Our members have authorised us to allocate 1.5% of licence fees for cultural purposes, which supports a range of projects assisting writers, artists and publishers. Many of the projects also assist educational and cultural institutions.

2. Do you support the development of a National Cultural Policy, and why?

We support the development of a National Cultural Policy.

For our members, digital technologies are becoming a dominant market reality. Australia’s profile as a nation with a small, highly educated population and a vibrant local publishing industry, in part the result of earlier government policy, places us confidently at the global threshold of digital markets for our cultural content.

However, if a course is not charted that enables the creative sectors to flourish, the digital environment will have more immediate harmful impact than was possible in the analogue environment – because geographic distance is no longer a physical barrier to trade, and because digital copies can be distributed to limitless recipients at record speed in perfect or near-perfect form.

In addition to this submission, we are also a member of the following organisations that have made separate submissions: Artspeak, Australian Copyright Council, Australian Committee for Cultural Diversity, and Australian Content Industry Group.

Associated reviews and initiatives

In addition to the associated reviews and initiatives listed on page 11 of the Discussion Paper, the following will also have implications for the Cultural Policy:
Book Industry Strategy Group report (and the associated report commissioned from PricewaterhouseCoopers, which is now available); and
the review of copyright law to be undertaken by the Australian Law Reform Commission in 2012.

3. What are your views about each of the four goals?

We support each of the four goals, the outcomes they are intended to achieve, and the government’s proposed strategies for achieving them.

We set out below some other suggestions about ways the government might achieve these outcomes, and ways in which we might contribute to them. Our primary focus is Goal 2, for which the Discussion Paper specifically identifies the effective use of copyright as part of the proposed strategies.

4. What strategies do you think we could use to achieve each of the four goals?

GOAL 1: To ensure that what the Government supports — and how this support is provided — reflects the diversity of a 21st century Australia, and protects and supports Indigenous culture

Artists’ resale royalty scheme
From its commencement on 9 June 2010 to 30 September 2011, the artists’ resale royalty scheme has generated royalties totalling $455,026, from 2,553 resales, for more than 330 artists. Many artists have received multiple royalties.

While the scheme was introduced to benefit all artists, so far it has particularly benefited Indigenous artists: 60% of the artists who have received royalties are Indigenous, and most of these are from remote communities.

We look forward to the government’s review of the scheme, commencing in 2012. We ask that that review include the provision that precludes the scheme reaching its full potential: the exclusion for resales that are the first transfer of ownership since 9 June 2010.

Indigenous Art Code
We supported the introduction of the Indigenous Art Code and we are signatories to it. We have been working collaboratively with the company administering the Code, Indigenous Art Code Limited, as there are many issues of common concern for the Code and the artists’ resale royalty scheme.

In order for the Code to achieve its full potential:

- the company will need to be properly resourced to enable its officers to undertake the educational and monitoring tasks critical to its success; and
- as proposed by the Arts Law Centre and others, it should apply to all relevant people and organisations, whether or not they are signatories.

Arts Law Centre’s services for Indigenous artists
We support the continuation of the Arts Law Centre’s services for Indigenous artists, including Artists in the Black and Solid Arts, and have provided financial support for its wills drafting program. We have also collaborated on training programs in Indigenous communities.
GOAL 2: To encourage the use of emerging technologies and new ideas that support the
development of new artworks and the creative industries, and that enable more people to
access and participate in arts and culture

The strategies in the Discussion Paper for this goal include:

* Strengthen the capacity of artists and performers to manage copyright and intellectual property, particularly in relation to online content.

* Support a competitive creative sector through initiatives including those set out in the Government’s Creative Industries Strategy. For example:
  * Optimising commercial capacity by improving business development, pursuing trade and investment, identifying markets and meeting consumer demand.
  * Growing creative content and services by driving creative innovation, powering intellectual property and copyright, exploring flexible business models, and promoting collaborative networks and spaces.

Our role is to facilitate access to copyright content, while ensuring fair returns to the creators of that content. We aim to do this in ways that are efficient and equitable both for those using the content, and those whose content is used. While the transition from print to online publishing has posed challenges, we have made significant investment in technological capabilities to enable us to manage the use of digital content.

*Educational access*

While widespread photocopying was initially seriously threatening to the survival of Australian educational publishing, the introduction of the educational statutory licence enabled the education sector to harness the technology to provide learning materials to students, while supporting the ongoing creation of new resources. The scheme was extended to digital content in 2000, and has provided similar benefits to the education sector, while supporting the creators of the content used by the sector.

From the education sector’s perspective, the fees that enable the use of almost all text and images, both hardcopy and digital, in a large variety of ways is relatively low: $4 per student per term in schools. The statutory scheme enables teachers to compile learning resources from an infinite number of sources, legitimately and with minimal compliance burden.

*Exclusions of fair payment to artists*

The Copyright Act includes a provision, introduced in 2007, that has unintended and unfair consequences for visual artists: section 28(7). The provision has a much wider operation than intended, and excludes payments that would otherwise be available to visual artists. We will be asking the Australian Law Reform Commission (ALRC) to review this provision in the course of its review of copyright law.

Other provisions (sections 65 and 68) allow the commercial publication of certain artistic works in public places, even though there are simple mechanisms to get clearances and pay the artist a fair fee. The 2002 report of the Contemporary Visual Arts and Crafts Inquiry (the Myer Inquiry) recommended the amendment of these provisions. We will be raising the issue again with the ALRC.

*Access by people with a disability*

By international standards, the Australian Copyright Act has generous provisions for use of copyright content by people with a disability. The Australian Government has appointed Copyright Agency to manage these provisions. The provisions allow for payment to copyright owners, but our Board has decided not to seek payment.
In addition to our management of these provisions, we have been engaged in other activities to benefit people with a disability. These include the establishment of an online catalogue of masters of material in accessible formats, to enable sharing by the various institutions assisting people with a disability.

We support proposals to increase access to content by people with a disability, and we will continue to work with both institutions assisting people with a disability, and publishers, to explore ways in which this might be achieved.

**Digitisation of collections**

We support the aspirations of Australia’s cultural institutions to digitise their collections to enable them to be viewed online.

While there is much focus on the copyright issues associated with digitisation of collections, the major impediment is lack of funding for the digitisation process, and we urge the Australian Government to commit funds to the digitisation of collections.

Solutions to the copyright issues are under review in a number of countries. Recently, the UK Government accepted the recommendation by the Hargreaves Review that ‘mass licensing’ be enabled by an approach known as ‘extended collective licensing’.

Extended collective licensing operates in Scandinavian countries. It enables a collecting society that represents a sufficient proportion of a class of rightsholders to extend its mandate to represent the entire class, subject to the entitlement of rightsholders in that class to opt out. The opt-out requirement distinguishes extended collecting licensing from statutory or compulsory licensing.

Scandinavian projects for the mass digitisation of library holdings are supported by extended licensing: the Bookshelf project in Norway, and Sweden’s Digital Library.

In Australia, amendments to enable extended collective licensing could assist to overcome copyright issues associated with mass digitisation by cultural institutions, particularly for ‘orphan works’ (works whose rightsholders cannot be found) and ‘out of commerce’ works. One approach could be to empower the Copyright Tribunal to approve the extension of a collecting society’s licence scheme to non-represented rightsholders, subject to a determination of the public interest in enabling the extension of the scheme.

We also note that there are two academic reviews of orphan works currently underway: one by the University of Technology, Sydney commissioned by Screenrights (which has recently issued a proposal for orphan works, but not for mass digitisation) and one by the University of NSW that has been supported by the Copyright Agency Cultural Fund.

**Online licensing**

The management of rights will increasingly be online, and increasingly automated. We have recently launched an online licensing facility, to enable simple, online clearances.

**Value of digital content**

One of the challenges for developing business models for digital content is that consumers commonly underestimate the investment required to produce it. Addressing consumer attitudes to the value of digital content is a critical issue in the development of revenue streams to creators from digital content.

We think the Government has a role in educating people about the value of digital content, and the effects on the creative environment if innovation and creative effort is not supported.

Strategies to convert unauthorised to legitimate use of content are also important. We support the submission of the Australian Content Industry Group for an industry-led solution to this problem.
Our survey of digital publishing trends

We are keenly aware that digital creation, distribution and consumption of creative content is still in its infancy. We recently received responses from more than 2,000 of our members to our survey about their perceptions of the digital environment. For around two thirds of the authors and publishers who responded, digital publishing still only accounts for less than 5% of their revenue. Business models for digital publishing are for most not fully formed, and assistance in understanding the evolving digital market will be key to flourishing Australian publishing and visual arts industries in the future, and while the majority of publishers have a digital publishing strategy in place (at varying degrees of development), an alarming 26% do not.

The main issues publishers and authors identified as concerns for them in the digital environment are: limited technical skills; lack of digital marketing skills; apprehension at the potential for large multinationals to dominate the online market; and the threat of online piracy.

Implications of Australian government policy on public sector information

The Australian Government has recently committed to providing open access to material published by government departments and bodies.

There is one aspect of this policy which has raised concerns for creators. The policy encourages government departments and bodies to acquire copyright from creators, rather than licensing it, so that the material can be released under a Creative Commons licence. This can create hardship for creators who are dependent on income streams from secondary uses of their works to support them in continuing their work. This is an aspect of the policy that we urge the government to review.

GOAL 3: To support excellence and world-class endeavour, and strengthen the role that the arts play in telling Australian stories both here and overseas

In an increasingly globalised environment, promotion and marketing will become increasingly significant for Australian creators and publishers.

Promotion of Australian content internationally

The Cultural Policy should include strategies for the marketing of Australian content internationally, and export into foreign markets. One mechanism is export councils to promote Australian cultural content to the world. For this we could emulate the best of what the British Councils around the world do for British cultural content. Such missions could act as ‘one-stop-shops’ to promote Australian books, art, film, music and other cultural works.

Such a strategy would be consistent with Brand Australia, which the Australian embassy in China has developed as part of ‘Imagine Australia’. The policy in China is just beginning to pay dividends in the publishing sector – with a number of Copyright Agency’s publisher members who have attended the writers’ weeks and publishers’ forums over the last several years reporting that rights exchange arrangements are now crystallising.

There should also be strategies to take advantage of opportunities to showcase Australian works on the world stage. When these arise, the government should be prepared to commit the resources required. For instance, the opportunity to be the focus country at international book fairs such as Frankfurt and Bologna come at an initial cost which requires government support. The returns for such investment, however, will be enduring. Similarly, for artists the ability for an Australian exhibition at international biennales increases

1 Detailed analysis of the responses to this survey can be viewed from the following address: www.copyright.com.au/Latest_News/CAL_releases_results_from_digital_publishing_trend.aspx
the profile of Australian visual arts, and enhances the ability of Australian artists to sell their works on global markets.

**Technical skills development**
Most creators and many publishers require technical skills development to enable them to create, develop and distribute creative content in the online environment. The Cultural Policy should commit to financial and other support to enable those involved in creative endeavour to successfully transition to the online environment.

**Booksellers**
In our view, booksellers will be central to the future of Australian publishing. They promote the works they sell, through activities such as book launches, readings, author talks and other experiences which create a close bond between them, the creators of works they profile, and their consumers. Booksellers need to be assisted into moving their services online. Many Australian booksellers either do not have a presence online, or have a very primitive online presence. Their concerns are similar to other Australian retailers who are experiencing increased bypassing of traditional shop-fronts to online trading – with the particular concern of foreign e-tailers selling works to Australian readers.

The Cultural Policy, in alignment with recommendations of the Book Industry Strategy Group, should include strategies to enable the survival of booksellers in the online environment.

**GOAL 4: To increase and strengthen the capacity of the arts to contribute to our society and economy**

**Contribution of copyright-based industries to the Australian economy**
In a recent speech, the Attorney General made the following remarks about the contribution of copyright-based industries to the Australian economy:

> In 2008, I launched research by PricewaterhouseCoopers found that Australia’s copyright industries have grown considerably over the past twelve years. In 2006–07 alone, Australian copyright industries employed more than 830,000 people – 8 per cent of the Australian workforce.

> They generated $97.7 billion – 10.3 per cent of our Gross Domestic Product. And earned more than $6.8 billion in exports – that is, 4.1 per cent of the Australian total.

> Australia’s copyright industries include Australian artists, authors, researchers, musicians and other creators. They also include collectng societies, and those involved in manufacture, communication, distribution or sales of copyright works. We owe much to all of these industries for the wealth they bring to Australian culture and the Australian economy.²

**Australian content for the National Broadband Network**
The Cultural Policy will need specific strategies, aligned with those emerging from the Convergence Review, to ensure that there will be Australian content available for delivery via the National Broadband Network.

We support the proposal by Artspeak for a proportion of the NBN budget to be allocated to content.

5. **How can you, your organisation or sector contribute to the goals and strategies of the National Cultural Policy?**

Our core business of providing streamlined access to other people’s content in a way that supports future innovation and creativity contributes to a number of the goals and strategies of the National Cultural Policy. We will continue to develop our services to enable online access, and to support the creation and delivery of new content.

**Copyright Agency Cultural Fund**

Our members’ allocation of 1.5% of licence fees enables grants of around $2M annually from our Cultural Fund. These grants are for individuals and organisations in the cultural sector to undertake projects that will develop their own professional skills, enhance the environment in which our members work, and develop new markets for their works – especially in foreign territories, and for projects which reward and celebrate excellence amongst Australian authors, artists and publishers.

The Cultural Fund cannot replace government’s role as a key funder of various cultural activities in Australia – in particular, the Cultural Fund cannot supplant the Literature Board in funding activities to support the Australian publishing industries. The Cultural Fund will provide funding for activities outside the regular funding provided by state and federal arts funding agencies – especially in the areas of skills development and to give projects seed funding for new initiatives which have the potential to develop new markets for our members’ works or to improve the environment in which they operate.

An example is the Australian Publishers Association publishing internships program. Funding was provided as a lack of opportunities for a new generation of editors to take up roles in publishing houses had been identified. Cultural Funding enables publishing houses to provide six months pay for interns. This project has led to ongoing employment for the vast majority of interns, and has also led to some publishers establishing their own intern programs, and others being able to attract philanthropic funding to support further interns in their publishing houses.

Copyright Agency is happy to provide any further comment or information on the content of this submission or any related area that Government considers relevant to the development of a National Cultural Policy.