

VOICE OF THE ARTIST

An independent research initiative
of the Copyright Agency | Viscopy

RESEARCH RESULTS



Deborah Kelly, artist, with a work in progress. Photo: Nick Cubbin.

introduction

The Copyright Agency | Viscopy started this project with a simple idea: let's truly listen to what visual artists in Australia and New Zealand think about copyright in today's digital world.

So we engaged independent research firm AMR to undertake the first part of this unique project, *Voice of the Artist*, to find out more about the extent to which visual artists have been impacted – either positively or negatively – by the online environment.

While there has been recent research into the value of the visual arts to the Australian economy and the impact of the online environment to the creative industries generally, this study is first in Australia to further explore the intersection between visual artists and the online environment.

It is about gaining a better understanding of how visual artists manage their copyright, how the digital environment has impacted on their ability to earn an income and perceptions of their rights in the digital economy.

AMR carried out quantitative and qualitative surveys with visual arts members of the Copyright Agency and Viscopy, together with ten partnering organisations, to gain a broader representation of visual artists in the industry generally.

The strong response rate of more than 1,000 visual artists shows we tapped into some areas of real interest and concern facing the arts industry today.

What emerged from this research is that while copyright today represents a small portion of visual artists' overall revenue, the online environment represents enormous untapped potential for new licensing opportunities.

Almost all artists (90%) have their work reproduced, but only 5% of their income is currently derived from copyright payments. Almost two thirds (63%) of all respondents work another job to supplement their artist income.

Artists are excited about how the online environment offers instant worldwide exposure that can allow them to reach new potential markets and customers, but they admit they don't know how to manage their artworks online in a way that would lead to revenue opportunities. They feel that once an image of their work is online, they forfeit control. This represents a powerful opportunity for Copyright Agency | Viscopy to work together with industry partners to provide new solutions to help artists protect and manage online reproductions of their work.

Even though around a fifth of artists do not allow their work to be reproduced without payment, most are happy for their work to be reproduced in cases that serve a mutual interest, or if they benefit from the exposure from being acknowledged through attribution. However, when the other party uses their work for commercial purposes, especially if they make a profit, artists want to be financially rewarded for that work. Attribution in all instances where work is used - with or without payment - is one of the most important marks of respect for visual artists.

We hope you find these results interesting and insightful and help to better understand the opportunities for creating a sustainable economic future for visual artists.



ADAM SUCKLING
CHIEF EXECUTIVE OFFICER
COPYRIGHT AGENCY | VISCOPY



TIM DENNY
CHAIRMAN
VISCOPY

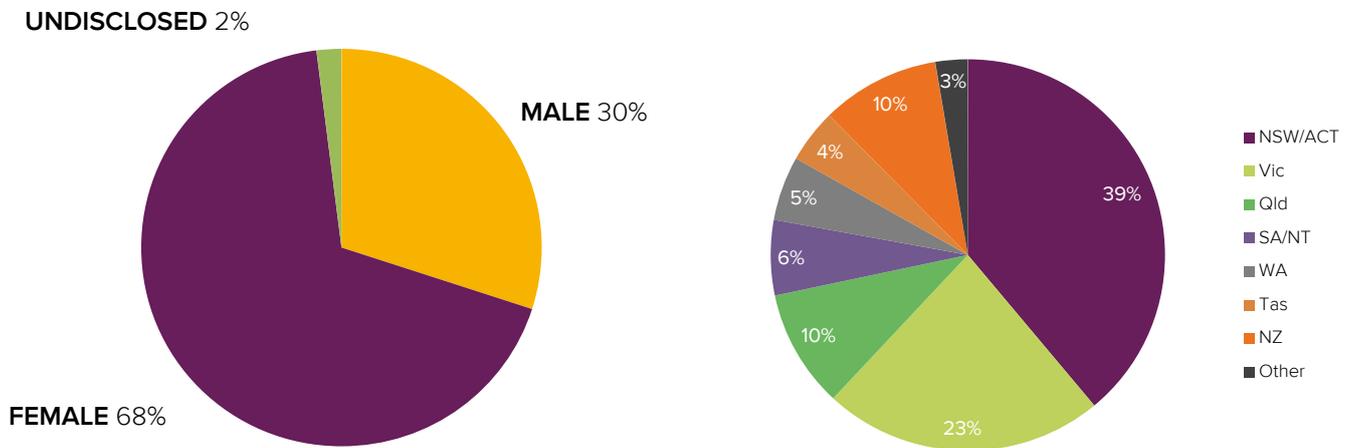
1

survey structure and demographics

RESEARCH METHODOLOGY

Data was collected via an online survey and five qualitative, in-depth interviews were conducted by AMR with key stakeholders.

There were **1,020 responses** and **five in-depth interviews**. The predominant response group were women from the ACT and NSW. Of the total respondents, 10% were from New Zealand.



PARTNERING ORGANISATIONS

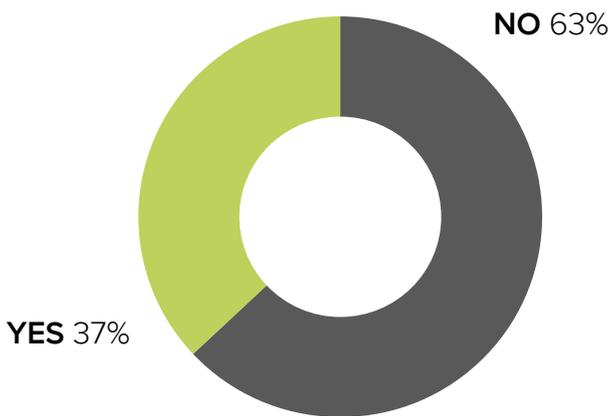
Of the total respondents, 30% were Viscopy members. The following partnering organisations assisted in reaching visual artists across Australia and New Zealand. NAVA was the most active partnering organisation, with 48% of responses coming via their direct links. This was followed by Artist Alliance (NZ) with 8%.



2

visual artists' profile & copyright management

IS YOUR ART PRACTICE YOUR MAIN SOURCE OF INCOME?



For just over a third of visual artists surveyed (37%), their art practice was their main source of income.

Artists who work in photography, installation and video are less likely than other artists to have their art as their main source of income.

The most common practices were painting (62%) and drawing (49%) however most artists identify themselves now as cross-disciplinary working across a range of genres.

5% INCOME FROM COPYRIGHT PAYMENTS



Artists whose art practice is not their main source of income are more likely not to manage their copyright in any way.

Only 5% of income is coming from copyright, with the majority of income from sales, or other income such as teaching, workshops or classes.

New Zealand artists are less likely than Australian artists to manage their copyright, and they're also less likely to be a member of a collecting agency.

95% OF INCOME FROM SALES

but

90%
of artists have had their artwork reproduced.

Most of these visual artists have had their work reproduced on websites (71%) and exhibition catalogues (64%).

2

visual artists & reproduction of work

90%

of artists have their artwork reproduced.

.....
&
only
.....

1/5

of artists surveyed (or 21%) ask for payment when their work is reproduced.

Artists are generally open to the reproduction of their work without payment if it serves a mutual interest.

Some of the benefits they perceive in these situations include promotion (71%), networking opportunities and the potential to create further paid opportunities in future (51%).

Most explain that they would allow their work to be reproduced without payment to support an organisation (73%).

In some cases, acknowledgement of an artist's work is perceived to be more valuable than a one-off payment.

but

38%

do not manage their copyright in any way.

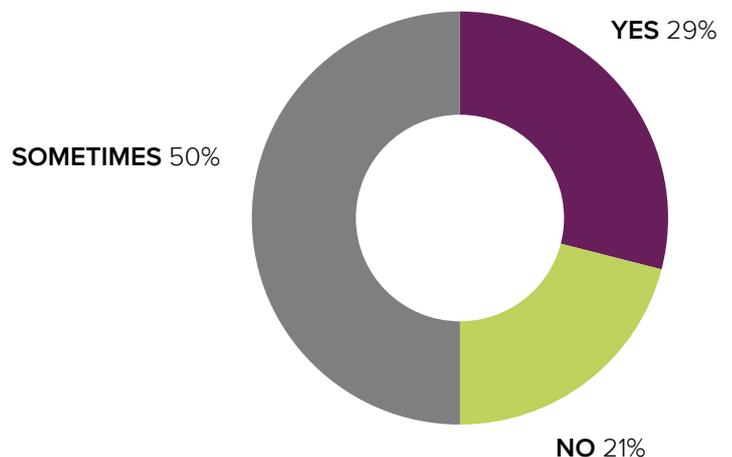
35%

own and manage their own copyright.

27%

have a collecting agency, gallery or agent managing copyright on their behalf.

DO YOU ALLOW YOUR WORK TO BE REPRODUCED WITHOUT PAYMENT?



3

copyright infringement

Overall, awareness of copyright infringement is low.

More than half of visual artists (57%) are not aware of any copyright infringements of their work, while a fifth (20%) are aware.

Of those that are aware, more than half (54%) said the infringement took place online, and a third (35%) said that the infringement happened in a publication.

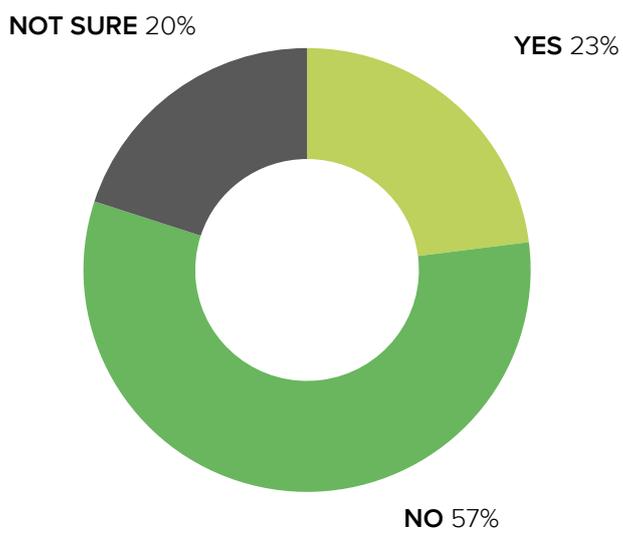
Artists whose main source of income is from their art practice are more likely to be aware of copyright infringements, and artists who work with photography and design are more likely to be aware of copyright infringements than artists from any other genre.

Some of the circumstances under which artists have experienced copyright infringements include:

- unauthorised use of their work;
- publishing outside the licence terms; and,
- sharing on social media.

“A commercial television network used footage of my artwork *without permission* and used it internationally without crediting me.”

ARE YOU AWARE OF ANY COPYRIGHT INFRINGEMENTS OF YOUR WORK?



78%

of all artists who experienced a copyright infringement took some kind of action, with half of these (51%) contacting the infringing party directly to request they cease the infringement.

23%

of all artists who were aware of a copyright infringement sought remuneration from the infringing party, but only 6% took legal action.

22%

took no action at all, with 58% unsure how to proceed.

3

copyright infringement

Most artists find it difficult to regulate copyright infringements.

They also feel that the personal effort and financial cost of addressing a copyright issue outweighs the benefits of successfully resolving the issue.

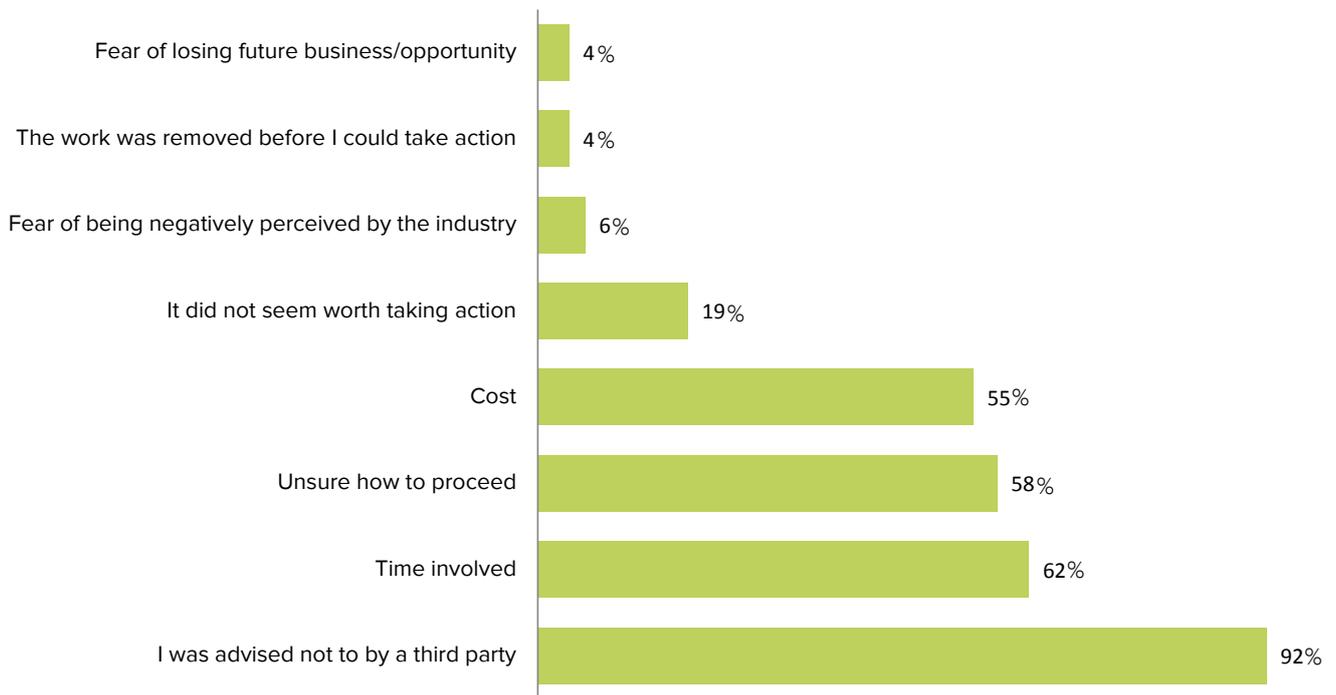
Some of the circumstances under which artists have experienced copyright infringements include unauthorised use of their work, publishing outside the licence terms and publishing on social media.

Over half (51%) who were aware of the copyright infringement contacted the infringing party to directly cease the infringement action.

“...I would *love* to receive payment for my work but it is almost like a full-time job trying to track your images...”

“...it ends up being the person with the *most money* who can present the best case...but artists don't have a lot of money...”

WHAT IS THE REASON YOU DID NOT SEEK REMUNERATION AND/OR TAKE LEGAL ACTION AGAINST AN INFRINGING PARTY?



4

impact of digital technology

Digital technology gives unprecedented exposure and ease of dissemination, but it's hard to manage and comes at a cost.

89% of respondents stated that digital technology has helped promote their works to a larger audience, however 56% identified the difficulty it causes in protecting their work.

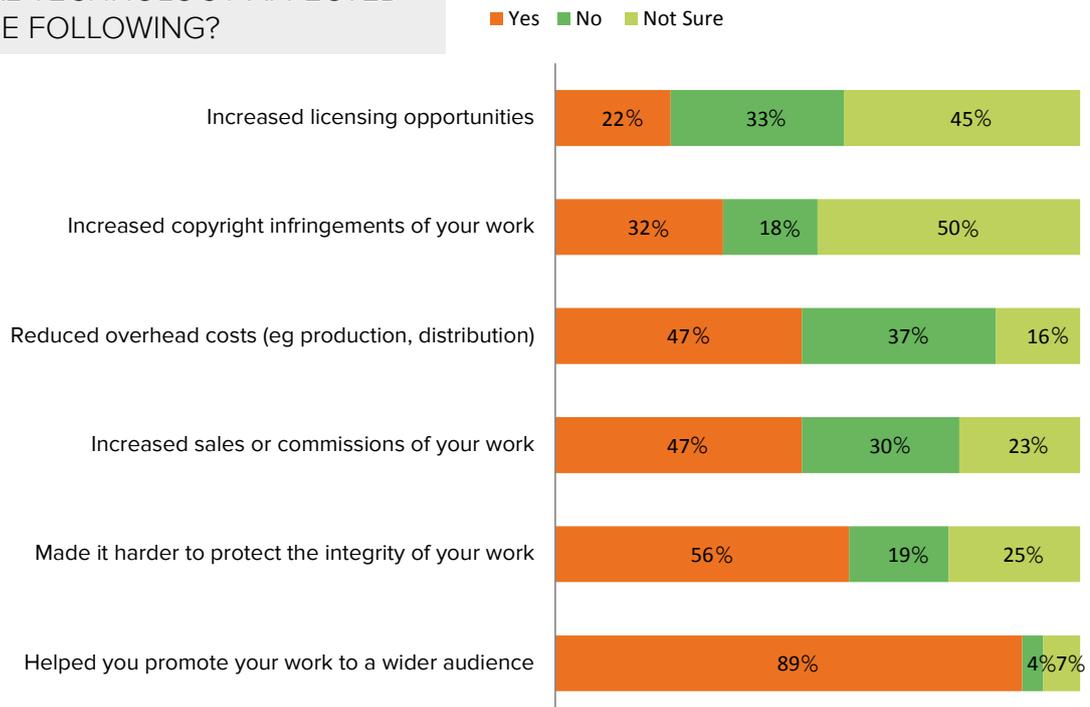
47% said that digital technology has reduced their overhead costs (e.g. production and distribution) but around a third (32%) said that digital technology has increased copyright infringements of their work.

Artists whose practice is their main source of income are more likely to state that digital technology has made it harder to protect the integrity of their work, and has increased copyright infringements of their work.

“...now I just *expect to give some work for free* to blogs or online sites for exposure.”

“...once it is in the digital space, it is *so easy to lose control* of the work...”

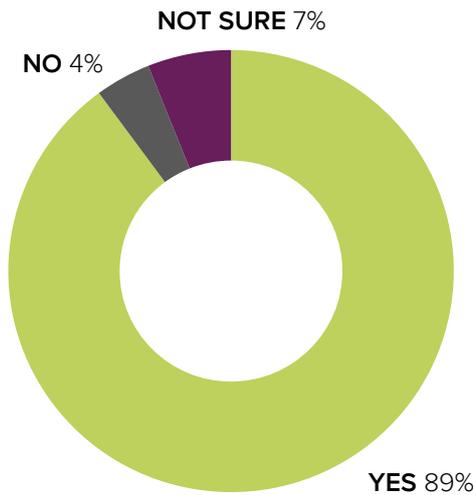
HAS DIGITAL TECHNOLOGY AFFECTED ANY OF THE FOLLOWING?



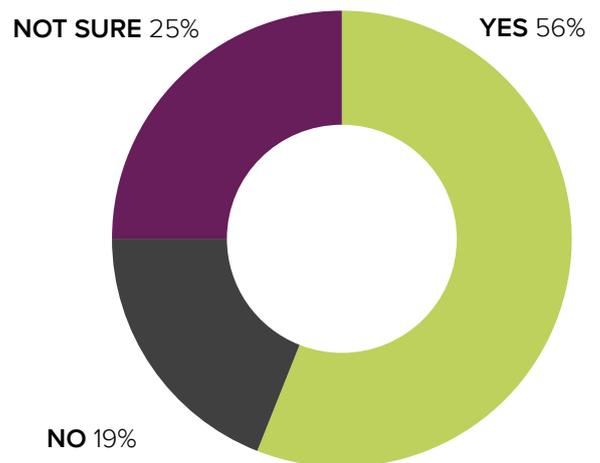
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impact of digital technology

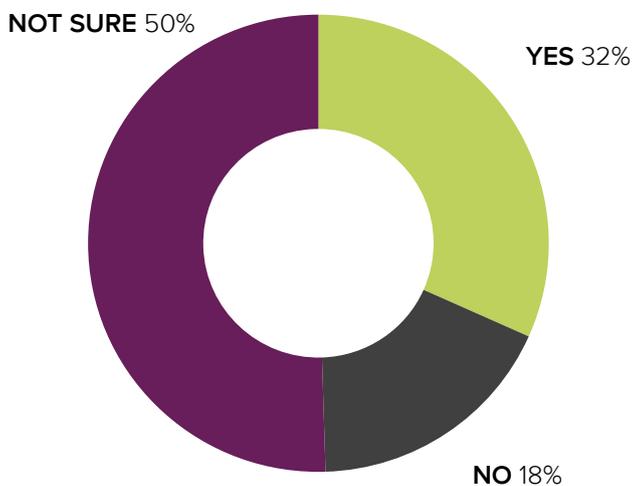
HAS DIGITAL TECHNOLOGY HELPED YOU PROMOTE YOUR WORK TO A WIDER AUDIENCE?



HAS DIGITAL TECHNOLOGY MADE IT HARDER TO PROTECT THE INTEGRITY OF YOUR WORK?



HAS DIGITAL TECHNOLOGY INCREASED INFRINGEMENTS OF YOUR WORK?



“A lot more time and energy has to go into ensuring that *images on a website or Facebook are protected.*”

Artists who work with installation are more likely to state that digital technology has made it harder to protect the integrity of their work, while artists who work in multimedia feel that it has increased copyright infringements of their work, but at the same time the increased exposure has led to licensing opportunities.

5

understanding of 'fair use'

Understanding of 'Fair Use' was very low, with definitions varying greatly between artists.

Generally, artists perceive reuse of their work to be unfair if the other party make a profit from their work, particularly without their prior permission or consent.

Respondents were asked to read scenarios based on real-life examples where artists' works have been used without permission or attribution. The artists were asked what they thought of the scenarios, and what they would do in similar circumstances.

scenario one

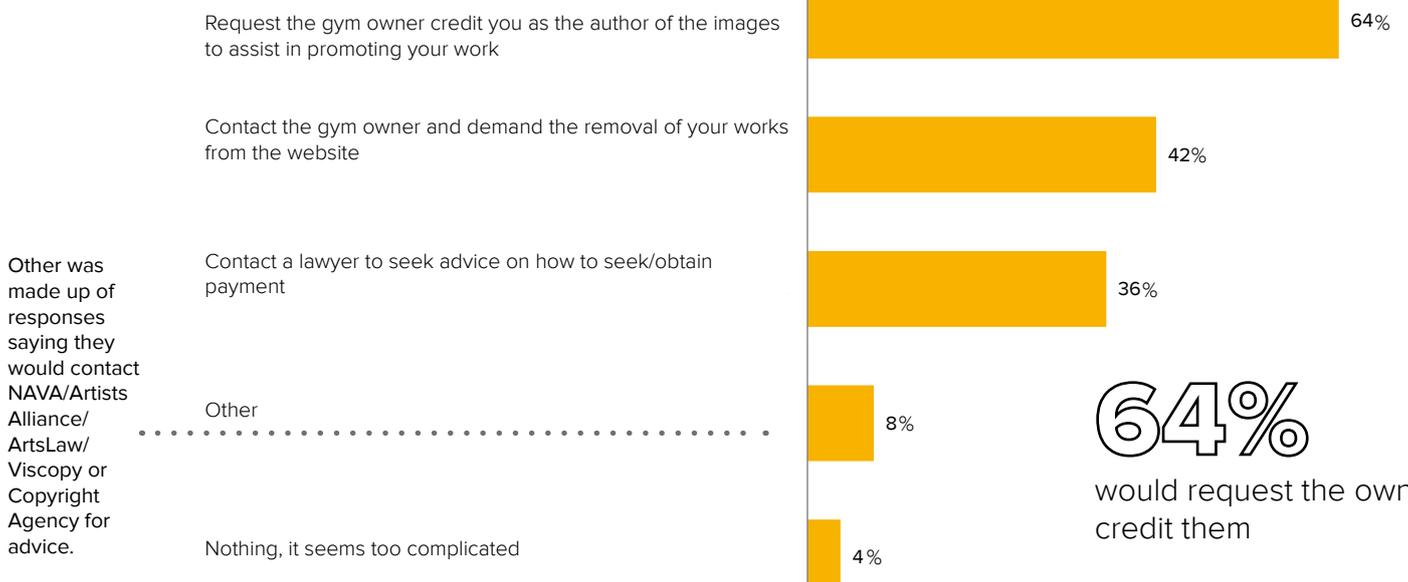
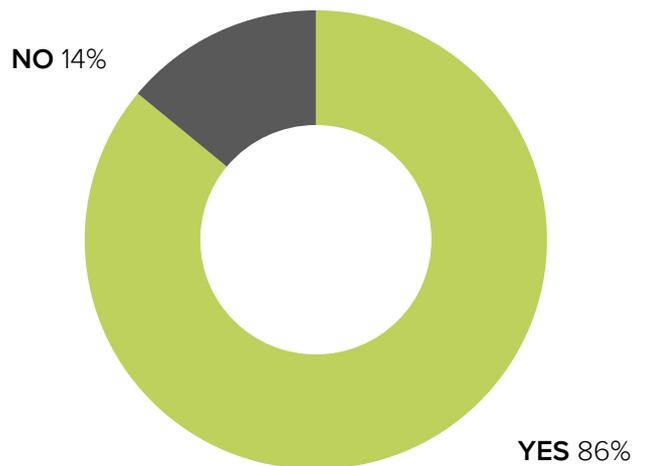
A professional photographer operates a website where his portfolio can be viewed publicly.

A friend of the photographer who recently joined a gym alerts the photographer that the gym's website is using images of his work, without permission or accreditation, in the member's section of the website, which is behind a secure login.

When the photographer contacts the gym to ask for payment for the use of his work, the owner refuses.

The owner claims that because the use is non-commercial and not publicly available, he does not have to pay.

IS IT FAIR FOR THE PHOTOGRAPHER TO REQUEST PAYMENT?



5

understanding of 'fair use'

scenario two

An architectural firm commissions a glass artist to create a ceiling to be incorporated into the design of a home they are constructing.

At the completion of the project, the architectural firm photographs the home and uses these images on their website and other promotional material to promote their services.

The artist notices elements of the glass ceiling in the promotional material and contracts the firm to request they stop using the images of the work. In response, the firm claims that they are within their right to use the images as it is impossible to photograph the architecture without also capturing elements of the artist's work.

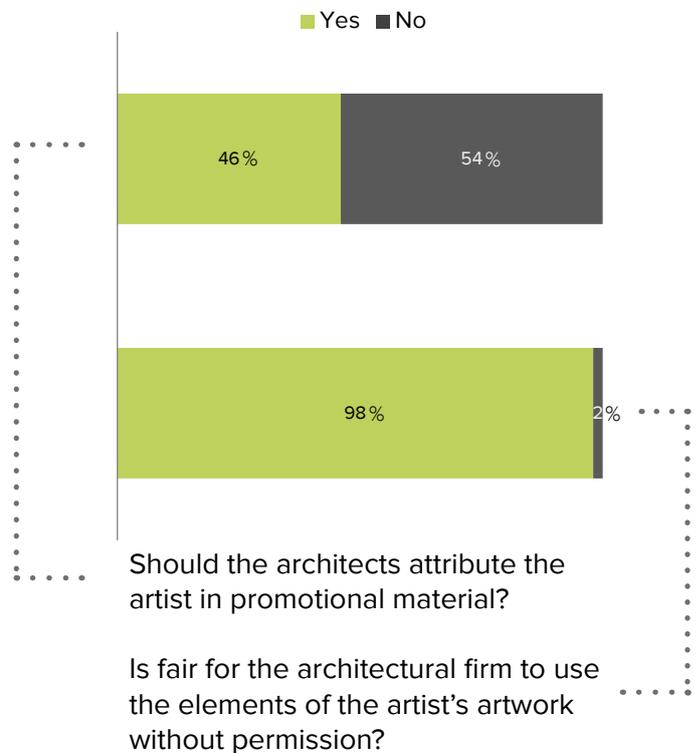
98%

feel the architectural firm should attribute the artist in promotional material

Artist Elisabeth Cummings in her home. Photo: Bryan Sun.

Perceptions of whether it is fair that the architectural firm use elements of the artist's work without permission was mixed (46% Yes/54% No) but almost all artists surveyed (98%) agreed that they should have been acknowledged.

This supports qualitative feedback that acknowledgement is very important to artists.



5

understanding of 'fair use'

scenario three

A painter discovers that a number of her paintings are on eBay with costs well below what people would pay for her work in a gallery.

In an effort to have the work removed from the website, she contacts eBay to claim that the seller of the work has infringed her copyright by placing images of her paintings on the accompanying listing.

The painter is also concerned about the provenance of a number of works listed on eBay, thinking some of them could be fakes.

When she contacts eBay to complain that these works could be fakes, she is told that the seller has certificates of authenticity and that she must prove that the works listed are not genuine.

She asks eBay to provide the details of the seller so that she can ascertain how these works came to be in the seller's possession, but eBay declines, citing its privacy policy.

73%

felt that eBay should be required to remove the images under these circumstances.

69%

said they would be inclined to withhold copyright to reproduce images for resold work.

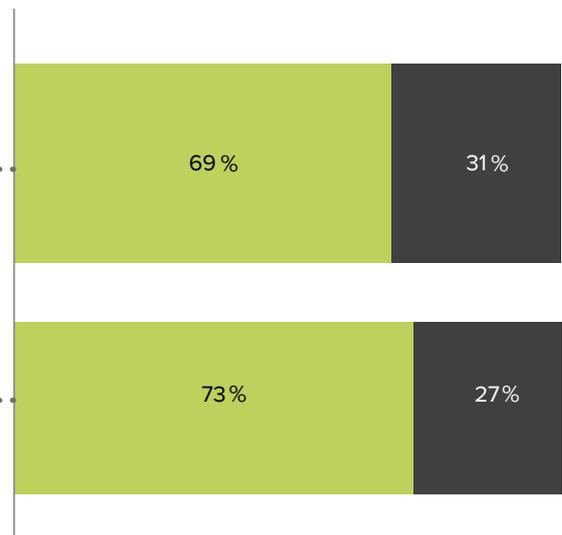
80%

felt that eBay has a responsibility to pass on the seller's details so the artist can ascertain the provenance of her work and to help her establish whether the work is fake.

Would you be inclined to withhold copyright to reproduce images for sold works which undermine your primary market?

Should eBay be required to remove images under these circumstances?

■ Yes ■ No



5

understanding of 'fair use'

scenario four

A photographer discovers that her works are appearing as thumbnails on a visual search engine that trawls the internet to provide greater access to images online.

When contacted about the use of the photographer's images, the owner of the search engine claims that he has the right to use them as he is only aggregating images already available online.

He does not generate any revenue from licensing or selling the images, but he does make revenue from selling advertising on the site.

The photographer argues that she should share in the profits of the search engine as her artwork is helping to bring users to the site which generates advertising revenue.

67%

felt the use of the photographer's work in this example was not fair.

73%

think that the photographer should be entitled to a share of the website's advertising revenue.

"...Unfair use would be when your work is being used *by someone else* to make *financial gain* without your *permission*."

Photographer Anne Zahalka in her home studio. Photo: Nick Cubbin.



5

understanding of 'fair use'

scenario five

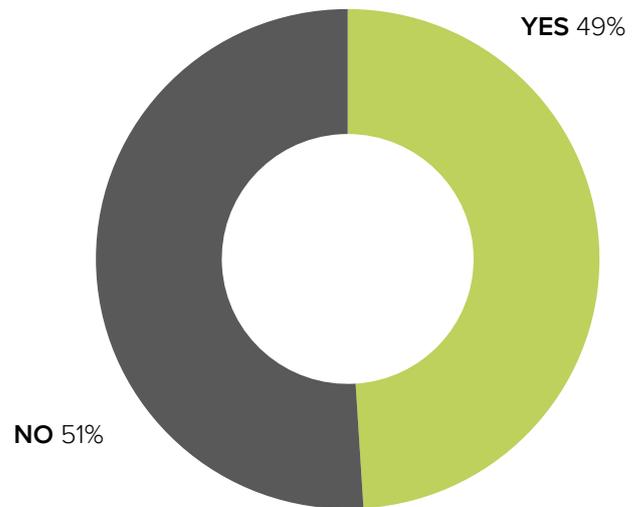
A photographer based in Byron Bay has a commercial practice shooting the local landscape and surrounding attractions. He is relatively unknown outside his local community and makes less than \$80,000 a year from his artistic practice.

An internationally recognised sculptor, whose work sells from hundreds of thousands of dollars, creates a new body of work based on a series of photographs by the photographer.

Although the features in the subjects of the sculpture have been exaggerated and the scale, colour palette, and medium are fundamentally different to the photographs, the sculptures are easily recognised as three dimensional interpretations of them.

When approached about using the photographer's images as the source material for the work, the sculptor claims it was done as social commentary on regional art, and no permission is needed.

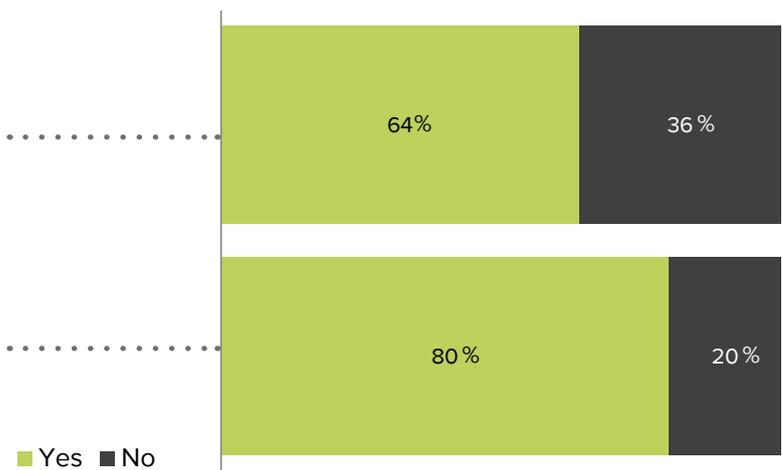
DO YOU THINK IT IS FAIR THAT THE SCULPTOR BASED HIS WORK ON ANOTHER ARTIST'S WORK?



Artists are divided about whether it is fair for the sculptor to base his work on another artist's work. But 80% feel the sculptor had an obligation to ask the photographer for permission to use the images and 64% believed they should have made an attempt to pay a licensing fee. Around half of the artists (47%) said the reinterpretation of the photographer's work would have a positive impact on the photographer's ability to earn an income from those photos in future (if accredited).

Does the sculptor have an obligation to contact the photographer to attempt to pay a licensing fee?

Does the sculptor have an obligation to contact the photographer to ask for his permission to use the photographer's images?



5

understanding of 'fair use'

scenario six

A painter created a large mural for a public art project funded by his local council.

A not-for-profit organisation conducted an ongoing public health service campaign to educate the public about living a healthy life and the risks of certain ailments. The campaign was widely promoted in many different media formats and outlets.

In connection with the campaign, the not-for-profit used a photograph of the mural in advertisements designed to raise awareness of childhood diabetes.

The advertisements depicted the mural in combination with informational text, corporate logos and advertising slogans.

84%

said the not-for-profit should have contacted the painter and offered a fee for the use of the work.

29%

said they would pursue the not-for-profit for payment of the work.

89%

said they would pursue the not-for-profit for attribution of the work.

Artist Blak Douglas in his home studio. Photo: Nick Cubbin.



5

understanding of 'fair use'

scenario seven

A multimedia artist uses a photograph found online, which is owned by a large news and media company, to create a new work.

The photograph is of a famous celebrity couple and has been used extensively in the media to comment on their high profile engagement.

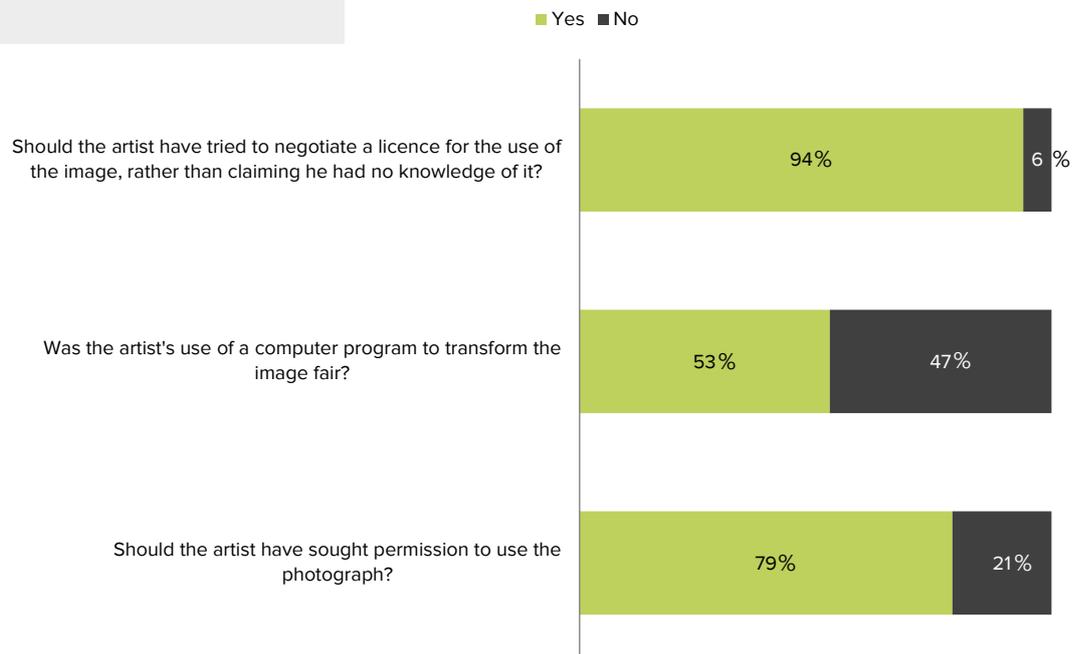
The work is created by manipulating the photograph with computer software and applying a number of filters to make the work look like an illustration.

The image becomes so popularised through social media it is bought to the attention of the news and media company, which challenges the artist on the originality of the work. In an attempt to conceal the source material, the artist destroys the original files and claims that he had no prior knowledge of the photograph.

Most (79%) felt that the artist should have sought permission to use the photograph. However, there is a divided opinion on whether the artist's use of a computer program to transform the image is fair (53% feel it is fair, 47% do not feel it is fair). The overall consensus is that the artist should have tried to negotiate a licence for the use of the image (94%).

94%

said the artist should have tried to negotiate a licence for the use of the image rather than claiming he had no knowledge of it.



6

key learnings & recommendations

1

attribution is everything

Whenever their work is reproduced, with or without payment, artists expect to be acknowledged. Asking permission is about mutual respect. Without attribution, exposure is meaningless.

2

the online environment is exciting

The online environment offers unprecedented ease of access and dissemination to a global audience. Its lower overhead costs lead to more opportunities for exposure.

3

it's hard to protect against infringements

Artists want more education and awareness about how to maintain the integrity of their artwork online, and to better track and monitor its use. Furthermore, artists need to know more about an appropriate course of action when they are infringed.

4

copyright is too complicated

Copyright is not well understood by artists in Australia and New Zealand. If artists understood copyright better, and it was easy and affordable to manage their image online, they would be more likely to act on infringements. 'Fair Use' is not well defined in artist's minds. More education and awareness about the US model of 'Fair Use' and its potential impact on Australian and New Zealand creators is urgently required. This should be coupled with education on Australian and New Zealand copyright law.

5

profits should mean payment

Artists are generally very open-minded to others reusing their work without payment, if it is respected and serves a mutual interest. But attitudes change when the other party uses their work for their own commercial gain, without paying a licensing fee, especially if the artist doesn't benefit from the association with the commercial use.



Artist Lindy Lee photographed in Sydney's Chinatown. Photo: Nick Cubbin.



Questions, comments, feedback?

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