

# USE OF ARTISTIC WORK IN AUSTRALIAN PUBLICATIONS



a study into current practice, patterns of ownership and relevant contractual arrangements for the use of artistic work in Australian publications

prepared for  
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## SUMMARY

The primary objective of the survey was to define the existing patterns of ownership governing the use of artistic work in Australian publications. The publishing and artistic communities have embraced this survey and are looking to it to provide advice and information. Only two of the selected survey sample refused to co-operate – a current affairs magazine in Sydney and a university-based publisher in Victoria.

Many respondents asked if they might be informed of the survey's results, in part to assist them navigate what is an increasingly more complex area of business activity.

The consultants found that, in general, no overarching 'pattern' of ownership of artistic work exists at all. Overall, only 22% of publishers claim to obtain a written assignment of all rights from freelance visual artists, with the primary school and children's sectors most aggressive in their use of this style of contract. However, the artists' and publishers' surveys show substantially different results, as the following 'nature of agreements between publishers and artists' table demonstrates.

**Nature of agreements between publishers and artists**

	Publishers' responses	Artists' responses
Publishers obtain written assignment of all rights	22%	4%
Limited rights writing - either publishers/artists agreements	40%	68%
Verbal agreements for all rights	7%	5%
Verbal agreements for limited rights	20%	7%
Other - including staff	12%	16%

Section 35.4 of the Copyright Act states:

*Where a literary, dramatic or artistic work is made by the author in pursuance of the terms of his or her employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the proprietor is the owner of any copyright subsisting in the work by virtue of this Part in so far as the copyright relates to (a) publications of the work in any newspaper, magazine or similar periodical; (b) broadcast of the work; or (c) reproduction of the work for the purpose of its being so published or broadcast; but not otherwise.*

Therefore, secondary rights income for employees of magazines, newspapers and periodicals – which includes the surveyed categories 'professional/specialist journals', 'trade magazines' and 'newspapers' –

belongs with the employee (and the MEAA agreements with News Limited and Fairfax have not altered this clause as far as photocopying income is concerned). In the same way, any magazines produced by the corporate sector would normally be covered under this clause (although for the sake of the survey, the category 'corporate', because of its high advertising component, has not been included under the s35.4 qualification).

In the absence of any advice to the contrary, the consultants have taken the view that secondary rights income for employees of those producing books, government publications, corporate and advertising remains with the company. For newspapers, magazines and periodicals, therefore, only material generated by freelancers with 'all rights' agreements (including their material held in in-house libraries) can be considered, for the purposes of secondary rights income, to be owned by the publisher.

When ownership of staff-produced work, that proportion of work produced from in-house libraries for which the publisher is deemed to own all rights, and commissioned work for which publishers have obtained all rights in writing, are taken into account, the figures in the table below ('artistic work for which publishers own full rights #1') are the result.

This table would alter significantly if the publishers' claim to 'all rights obtained verbally' is included (see table 'artistic work for which publishers own all rights #2 overleaf).

Obviously, as the artists' opinion of how often they give all rights in a written or verbal agreement differs so dramatically to the publishers', the publishers' view of what they own can only be seen as optimistic.

**Artistic work for which publishers own full rights #1, (ie, staff produced, plus where all rights are obtained in writing)**

	Photographs	Fine art	Line drawings/ illustrations	Graphs/ tables	Cartoons	Maps/ Plans
Primary school books	55%	0%	68%	79%	84%	67%
Secondary school books	12%	0%	62%	51%	68%	72%
TAFE/tertiary books	23%	0%	63%	57%	0%	12%
Professional/reference	24%	0%	18%	53%	50%	14%
Adult fiction/non-fiction books	20%	0%	7%	33%	0%	1%
Children's	12%	0%	36%	100%	0%	0%
Professional/specialist journals	0%	0%	0%	0%	0%	1%
Trade magazines	25%	0%	16%	0%	0%	11%
Government publications	80%	0%	66%	90%	0%	100%
Advertising	3%	0%	80%	100%	0%	33%
Corporate	24%	0%	50%	50%	0%	60%
Newspapers	6%	0%	0%	0%	0%	0%

Although both these tables reflect the current position, it must be noted that this is probably the highest figure likely to be seen in the Australian industry, as artists become more assertive about their rights and

some sectors of print publishers in Australia recognise the reality of their rights position. 95% of publishers use photography regularly, with 76% using illustration and 60% graphs and tables (refer Table 13).

**Artistic work for which publishers own full rights # 2, (ie, staff produced, plus where all rights are obtained in writing, or verbally)**

	Photographs	Fine art	Line drawings/ illustrations	Graphs/ tables	Cartoons	Maps/ Plans
Primary school books	58%	0%	78%	79%	84%	69%
Secondary school books	12%	0%	62%	51%	68%	72%
TAFE/tertiary books	26%	0%	63%	57%	0%	12%
Professional/reference	24%	0%	18%	53%	50%	14%
Adult fiction/non-fiction books	22%	0%	14%	33%	0%	2%
Children's	18%	0%	36%	100%	0%	0%
Professional/specialist journals	0%	0%	0%	10%	0%	1%
Trade magazines	30%	0%	24%	0%	0%	16%
Government publications	81%	0%	66%	90%	0%	100%
Advertising	32%	0%	80%	100%	0%	33%
Corporate	35%	0%	50%	50%	0%	60%
Newspapers	8%	0%	0%	0%	0%	0%

In the category of fine art, it is absolutely clear that all secondary rights income belongs to the artist. All cartoonists, other than a large proportion of those working in the categories of primary school, secondary school and professional reference, are due secondary rights income. In every sector of the publishing industry, other than primary school books and government publications, more than 50% of secondary rights remain with the artist. In almost 60% of the categories, approximately 75% of artists are due the secondary rights income.

66% of publishers and 59% of artists were aware of the 1998 changes to the Copyright Act in regard to ownership of photographs, with a corresponding drop in awareness by both sectors in regard to s135ZM, where 44% of publishers indicated awareness and only 32% of artists. (Tables 8, 22, 29, 35, 41, 48, 55 and 68 refer.)

Although at the beginning of the survey publishers said they are responsible for paying only 68% of the permission/commission fees for artistic work (the other 32% being the responsibility of authors or 'others'), this question was then pursued through individual art forms. After taking into account cases where the publisher pays fees and recharges the author, when individual art form data is combined it brings a substantially different result. The average then becomes 80% 'publisher pays commission or permission fees' which correlates well with the artists claim that 87% of their fees are paid by publishers. (Tables 14, 21, 28, 34, 40, 46, 54, 72 refer.)

Publishers and artists are generally in agreement on the question of who commissions artwork with 78%

of publishers and 81% of artists claiming in-house publishing staff (editors/art departments/rights officers). (Tables 17, 24, 31, 37, 43, 50, 62 refer.)

As surveying of publishers progressed, it was clear that the circulation within companies of printed material concerning copyright was poor. The consultants can only assume that copyright information remains with management, rather than reaching out to the staff industry bodies seek to inform.

Across both publishers and artists there is confusion caused by legal terminology (and lay understanding of it), with a poor understanding of copyright as it affects the use of artistic works generally and very little detailed knowledge of the 1998 changes to the Copyright Act.

Almost all publishers are anxious to 'do the right thing' – to treat artists as partners in the publishing process, and to abide by the law in regard to copyright. As there has been no advice to publishers about how any new distributions will be handled, some assume that publishers will have to do it. This causes anxiety, particularly from the book sector. Because educational institutions generally do not provide details of the actual pages when they complete detailed copying records, publishers cite identification of artwork as a major problem. One large publisher also pointed out that every accounting transaction costs their company more than \$50.

Without doubt, there is a high level of unauthorised copying of artistic work in schools and colleges. The consultants were also concerned at the continued reuse of artistic material without permission both by private and government publishers producing material for the education sector. Apart from the recorded infringements (refer comments to Table 74), many artists and publishers spoke at length about this problem.

Several publishers and artists also described the nature of their relationship with CAL, or, more worryingly, their lack of any relationship at all. They also showed a lack of any understanding of the work of CAL in particular and collecting societies in general. Apart from the usual 'I know my work is copied but I never get any money' type of comment, others were problem specific but not relevant to the purpose of this survey. There is certainly a lack of understanding of the sampling methodology and a lack of confidence in the system.

The survey demonstrates that publishers generally do not attempt to control all rights. They recognise the rights of all creators. They equally acknowledge that their copyright management of artistic work needs clarification and stronger internal management. Most publishers simply want to clarify the rights trail through the publication process.

All that said, and notwithstanding the level of infringements identified during the course of this survey, artists like their publishers, even if they don't always trust them!



## RECOMMENDATIONS



- 1: That the relevant collecting societies work together, without reliance on trade associations, to raise awareness of general copyright issues throughout the publishing and artistic communities in Australia.**

It became clear during the process of surveying that awareness of copyright in general is surprisingly low throughout the industry. Many respondents are not members of trade associations, nor do they wish to belong, yet they are important to the publishing industry in Australia. Their understanding of copyright generally was disappointing, given they earn their living from copyright. Many claimed not to know where to go to source information on copyright; with others there is confusion over definitions and the general language of copyright. Even where respondents were members of collecting societies and/or associations, they felt much of the explanatory material was too inaccessible, too legalistic and too infrequent.

While an editorial and advertising campaign is recommended, targeting publications that actually reach editors, art departments and artists, the consultants also recommend increased active participation in industry and art specific, professional skills conferences.

- 2: That the relevant collecting societies continue to work closely with appropriate associations and individuals to increase the understanding of copyright within the industry, especially as it affects the use of visual art.**

Where the consultants found a good general knowledge of copyright, awareness of its particular application to the use of artistic work in publications was low. While visual artists themselves are increasingly educating publishers about the issues surrounding their particular art works, the process could be further assisted through the active participation of associations and increased involvement of key industry individuals who will command attention.

Although CAL does have a mailing list, it is clear its material is not widely circulated within organisations. It is not frequent enough to have real impact and tends to stay 'at the top'. The consultants recommend a more frequent, cost effective, broader distribution of simply expressed information material through active use of email to as many practitioners as possible. This could ensure that all affected within a company are communicated with directly. To build appropriate email lists will require the co-operation of trade associations and individuals, but given the heightened awareness of copyright at this time, co-operation is likely to be forthcoming. CAL might

also consider placement of spot ads in appropriate mass-market publications to solicit interest and reach those individuals not members of organisations.

- 3: That the relevant collecting societies work closely with appropriate industry associations to increase detailed awareness by publishers and artists of the 1998 changes to the Copyright Act and their effect on the industry.**

While many in industry claimed an awareness of the 1998 changes to the Copyright Act, the level of detailed knowledge of the changes was very low, especially given the importance of artistic work in Australian publishing, and the growing importance of statutory copying revenues to publishers and artists.

- 4: That CAL's scheme of distribution, revised to take account of the 1998 changes to the Copyright Act, be advised to the industry as soon as practicable to allow copyright owners to plan appropriately.**

The consultants found a high level of anxiety from publishers concerned about managing the changes within their organisations, especially if it falls to them to identify ownership of artistic work in their copied publications. Many are looking to CAL and VISCOPY for advice and guidance. If/when CAL/VISCOPY agree on revised distribution methods, advice and appropriate training should be made available as soon as possible.

- 5: That the relevant collecting societies encourage publishers and artists to work towards improving the form of their contractual arrangements, if necessary by the collecting societies facilitating the development of a simple, non-prescriptive contract 'template' to be available through industry web sites.**

While there is a high level of written agreements between publishers and artists, the implication of many of these contracts is not understood, perhaps because they are too complicated. Artists without written contracts are loath to disturb traditional relationships by insisting on contracting for everything, even if there is widespread acceptance that clearer understanding would only benefit all parties. Any template would need to satisfy most parties not wishing to enter formalised contracts, while at the same time enabling them to clarify their rights situation.

- 6: That CAL publishes the sampling methodologies used to monitor statutory licence photocopying of Australian publications by educational institutions, and continues to monitor the concerns of Australian artistic creators and publishers regarding sampling methods and ensures that these concerns are reflected in its policies and recommendations.**

The lack of understanding within the publishing and artistic communities on statutory copying sampling methods was very high. While the sampling methods are acknowledged to be fair and realistic by

market researchers and the courts, understanding and acceptance of them is very low in the practitioner community.

**7: That more active and informed customer participation in the work of CAL and VISCOPY be encouraged and resourced appropriately.**

Awareness of the collecting societies and their work for rights holders is low. Even where practitioners are recipients of monies through collecting societies, they view the societies as remote– even semi-government – organisations, ‘not of the industry’. Building closer relationships with their respective markets can only benefit all parties.

**8: That the consultants prepare a short summary of the survey’s findings and that the summary be made available to all respondents, trade associations and other appropriate and interested parties.**

Apart from the formal results contained herein, the surveying process opened many eyes to the work of the collecting societies, changes to the law and, in too many cases, the importance of proper copyright management. The consultants feel that wide distribution of a summary of the survey will assist this process and provide public relations opportunities for CAL.

## THE PROJECT BRIEF



### **Objective**

The objective of the project was to identify current practice, patterns of ownership and relevant contractual arrangements for the use of text (where it is relevant to the use of artistic work) and artistic works generally in Australian publications. The study also took account of contracts for the use of literary works where this may have affected the arrangements for use of artistic works.

To gain the broadest possible picture of the handling of copyright in these circumstances, the study approached Australian publishers and artists (in particular photographers and illustrators) in an attempt to reconcile the understanding of the ownership of rights from each perspective.

The results of the project will, hopefully, assist CAL and VISCOPY to implement the changes to the distribution of fees for pages copied under statutory licence that includes both literary works and artistic works.

### **Changes to the Act**

In July 1998 the Copyright Amendment Act No 1 changed the method of distribution of fees collected for pages copied by educational institutions which include a combination of artistic, literary, dramatic and musical works. The changes require that 50% of the fees collected for this copying should go to the owner of copyright in the artistic work and the remaining 50% of the fees should be paid to the copyright owner or owners of the other works on the page copied. (Refer Attachment 6 for the relevant section of the Copyright Act as amended).

### **Relevant Copyright Act information**

Insofar as the study was concerned, relevant information regarding copyright was advised to all those surveyed:

- the relevant owner of the copyright is the owner of the reproduction right;
- generally the person who creates the work will be the owner of the copyright in the work, subject to exceptions in the Act and any agreement which may provide otherwise;
- an exception which may be relevant is that the owner of the copyright in a work created by an employee in the normal course of employment will be the employer;
- prior to July 1998 the owner of copyright in commissioned photographs was the person who commissioned the work. The July 1998 changes mean that a photographer will now retain

- copyright in a commissioned photograph unless it is taken for a private or domestic purpose or unless there is an oral or written agreement to the contrary;
- a photographer may also assign their copyright in writing;
- photographs taken prior to 1949 are no longer in copyright;
- section 35(4), splitting ownership of copyright in newspaper articles, may be relevant;
- a non-exclusive licence is not sufficient to claim copyright ownership; and
- an exclusive licence may be equivalent to copyright ownership depending on the contractual arrangements. An exclusive licence must be in writing.

### **Definitions of 'Artistic Work'**

Section 10 of the Copyright Act 1968 defines 'artistic work' as: '(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not; (b) a building or model of a building, whether the building or model is of artistic quality or not; or (c) a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies; but does not include a circuit layout within the meaning of the *Circuit Layout Act 1989*'.

The Act further defines

- *sculpture* to include 'a cast or model made for the purposes of sculpture'.
- *drawing* 'to include a diagram, map, chart or plan',
- *engraving* to include 'an etching, lithograph, product of a photogravure, woodcut, print or similar work, not being a photograph'
- *photograph* to mean 'a product of photography or of a process similar to photography, other than an article or thing in which visual images forming part of a cinematograph film have been embodied, and includes a product of xerography, and "photographic" has a corresponding meaning ...'.

The Copyright Act 1968 does not contain a definition of painting. The *Shorter Oxford English Dictionary* defines painting as the result or product of applying paint; colouring; pictorial decoration; or a representation of an object or scene by colours on a surface. From this definition it seems that a painting need not be produced by the use of paint and the use of other "colouring" could constitute a painting. In *Merchandising Corp of America Inc v. Harpbond Ltd* [1983] FSR 32 it was held that (a) a painting is a work in the ordinary usage of the English language; (b) it is a question of fact whether a work is a painting or not; (c) facial make-up is not a painting for the purposes of the UK Copyright Act 1956 but a photograph or drawing of the make-up does attract copyright protection; and (d) according to Lawton LJ a painting must be on a surface of some kind; a painting is not an idea; it is an object, and paint without a surface is not a painting.

The rationale for this decision seems to be because make-up is not permanent. However, the destruction of a work does not affect the subsistence of copyright which came into existence when the work was made.

Given these definitions, an artistic work for the purpose of the study would include fine artworks (such as paintings, lithographs, and screen prints) line drawings, graphs / tables, cartoons, photographs, maps and plans.

A requirement for copyright protection is that the work be original. Mathematical symbols and tables may not fall in the above definitions and may lack sufficient originality.

### **Questionnaire design**

Questionnaires were designed in consultation with CAL and VISCOPY and were piloted and refined before surveying began. The publishers to be surveyed were selected by category and region. Artists were selected by category after consultation with industry associations.

### **Market segmentation**

To ensure comprehensive coverage, it was considered essential that the survey consider the contractual arrangements for the use of literary and artistic works in all areas of commercial and government publishing in Australia, including:

Primary school books	Secondary school books	TAFE/tertiary books
Professional/reference	Adult fiction/non-fiction ('trade')	Children's
Professional/specialist journals	'Trade' magazines	Government publications
Advertising agencies	Corporate (in-house)	Newspapers

In addition, it was determined that because it appeared that a high proportion of artistic works are sourced from libraries, photo libraries, handout or government, the terms on which those parties acquire the rights to use artworks in publications and terms on which they licence this use would be explored.

In all cases effort was to be made to record discrepancies between the understanding of publishers and creators as to where rights reside, why such misunderstandings occur, and how they can be resolved or avoided.

It was further agreed that the publishers surveyed should include not only representative members of the peak trade associations (Australian Publishers Association – APA, and the Association of Business Publishers – ABP), but all of the broader membership of both CAL and VISCOPY. To assist in developing the sample CAL made available, on a confidential basis, details of their most copied works in various educational sectors.

Items for close examination included specific publications with a significant component of artistic works, reading and maths programs with a high visual content, TAFE publishing, undergraduate material in subjects

such as medicine, other publications which feature line drawings, tables and graphs, and relevant magazines and newspapers.

Other items include magazines published by the major groups, and those published by individuals, arts organisations, and specialised industry groups. Metropolitan, suburban and rural newspapers were also to be surveyed.

The project also cursorily examined education department publishing, the differences in policy between states, variations in subject matter and materials, and effects of changing education trends on Australian publishing.

### **The consultants**

The project was divided between two consultants based on complementary expertise. This division roughly separated the investigation into two sectors, magazine and newspaper publishers on one hand, and education and other publishers on the other.

The two consultants selected for the project co-operated with one another during the course of the project to enable the greatest coverage of the publishing sector and the artists who contribute to it.

### **Surveying**

Surveying was undertaken by means appropriate to the industry sector, including surveys/questionnaires, telephone polling, and an examination of existing documentation and contracts where accessible. While some latitude was given on methodology in order to produce rapid and accurate results, at all times the nature and scope of surveys/questions were discussed with CAL/VISCOPY and between the consultants to facilitate full coverage and to provide compatible and comparable results.

The sample proposed was not designed to be statistically representative of the publishing industry. Rather it was intended to form a purposeful selection of those who can provide a coherent picture of current practice, patterns of ownership and relevant contractual arrangements for the use of visual material in Australian publications with a particular emphasis on ownership of secondary rights.

To minimise errors, interviews were conducted in a standardised manner to minimise the influence or bias of the surveyors.

Surveying was undertaken in two separate batches: first publishers, then artistic creators.

The process of developing and implementing the project was as follows:

## Survey One

- Discussions between consultants and CAL/VISCOPY to finalise project brief. Comment on draft document from CAL/VISCOPY. Discuss suggestions. Finalise brief for approval.
- Suggested list of publisher categories/appropriate organisations. CAL/ VISCOPY feedback.
- Prepare methodology.
- Sort complete sample by location.
- Cull list to manageable/representative sample. CAL/VISCOPY approval
- Draft questionnaire prepared. CAL/VISCOPY approval.
- Undertake Stage One surveying. Unless the respondent was outside Sydney/Melbourne, all surveying was undertaken face to face.
- Analyse results.

## Survey Two

- Develop questionnaire for suppliers (visual artists). Approval from CAL/VISCOPY.
- Choose cross section of photographers, fine artists, illustrators, cartoonists and designers of maps and plans, and graphs and tables, using the industry associations as the 'door' to a select sample.
- Selectively sample visual artists via a telephone survey and, in some cases, a written questionnaire
- Analyse results.

In addition, sufficient questionnaires (see Appendix 2) were prepared for distribution to APA and APB members not individually surveyed and to any others suggested by CAL/VISCOPY. Questionnaires were also distributed to photographers at *Photo & Imaging 99*. The results of these surveys were used for comparison purposes and do not form part of the tabulated results.

### Survey one: respondents

For Section One, 78 separate publishers representing hundreds of imported and numerous local imprints were interviewed to ensure full coverage of different types of publishing in Australia. Ownership was not a consideration. Specialisation, market penetration and reputation were factors considered in choosing respondents.

Respondents complete a detailed questionnaire (see Appendix 1). Most interviews were conducted face to face, either with individuals or, particularly in the case of the larger publishing companies, with numbers of staff involved with copyright, eg rights/permissions officers, publishers, editors, production/design managers.

With the exception of two publishers – one Melbourne-based university publisher, one Sydney-based current affairs magazine – all those approached co-operated fully with the survey, for which the consultants, Copyright Agency Limited and VISCOPY Limited are grateful.



While specific publishers were nominated for their expertise in particular areas of publishing, the nature of 'overlap' in different market areas was also noted. Where applicable current practice across all areas of publishing was explored when individual publishers were being interviewed.

All respondents completed Section 1. Section 2, which is divided into separate categories of artistic work, was only completed where publishers used the nominated artistic work on a regular basis.

### **Survey Two respondents**

For Section Two, 70 suppliers of artistic work were interviewed to determine their management of artistic copyright. These included photo libraries, which, of course, represent many thousands of individual photographers.

The sample contained a cross section of practitioners, including a representative sample of the following categories:

Artists, including publisher artists and author artists		
Photographers	Photo libraries	Illustrators
Cartoonists	Cartographers	Designers

Respondents were contacted personally or by phone. All surveying was based on the visual artists' questionnaire (see Appendix 4).

All the visual artists contacted co-operated fully with completing the survey.

# 1 SURVEY ONE (PUBLISHER) RESULTS

## 1.1 USE OF ARTISTIC WORK IN AUSTRALIAN PUBLICATIONS: GENERAL

### 1.1.1 Publishers' copyright policies/practices covering the use of artistic works in Australian publications

Table 1:  
Publishers' copyright policies/practices covering the use of artistic works in Australian publications

	Publishers with blanket Copyright policy Covering use of Artistic work	Publishers with no blanket copyright policy for the use of artistic work
Primary school books	44%	56%
Secondary school books	43%	57%
TAFE/tertiary books	50%	50%
Professional/reference	44%	56%
Adult fiction/non-fiction books	27%	73%
Children's	57%	43%
Professional/specialist journals	33%	67%
Trade magazines	25%	75%
Government publications	33%	67%
Advertising	50%	50%
Corporate	67%	33%
Newspapers	50%	50%
<b>TOTAL</b>	<b>44%</b>	<b>56%</b>

As indicated in Table 1, 44% of respondents claim to have a blanket copyright policy for the handling of artistic copyright. It is important to note that a 'blanket copyright policy' cannot be read as a blanket 'publisher has all rights' policy. Often the blanket policy may be that the publisher buys rights for one-use only.

There are significant variations within the groups of respondents, and explanations behind the 'yes' and/or 'no' answers varied significantly. For example, while 67% of corporate self-publishers which completed the survey indicated having a blanket policy, two other major Australian companies originally included in the sample to be interviewed were unable to identify either an appropriate person to complete the questionnaire, or any policy concerning the management of copyright in their publications.

In completing the survey, one respondent commented:

*we attempt to get assignment for all material other than photographs acquired from photo libraries. In most cases we succeed... now well over 90% in primary school material, around 75% in secondary for all artistic, with exception of photographs. We do because we recycle material into textbooks, teachers' material, supplementary readers etc.*

This highlights a problem identified by several artists who expressed concern that material provided for a specific publication is then recycled by the publisher without separate approval. This practice seems to be restricted to the education sector.

Other random comments from respondents who indicated the use of a blanket copyright policy:

*for academic books we get publishing rights only. Sometimes school publishing is different – not always clear cut which rights we are getting – sometimes all, sometime few...*

*have a policy that covers everything but photos where we have to deal with photo libraries, mainly but not exclusively for covers. Would love to be able to harmonise all rights, but seems impossible in present climate*

*certainly for primary and secondary school material we try to get all rights, probably covers 90% of our output. Different with tertiary titles where academics are less prepared to assign all copyright and we use more photographic material from photo libraries which are unwilling to assign*

*we get an assignment of all copyright, in all cases, certainly in last two years – only exception may be the cover which we may get from a picture library...*

*we have a blanket policy including clause in our contract covering payments for photocopying – but it's not one policy for all books – we have firm written policies for different types of books*

*we get non-exclusive licenses ... most permissions for artwork are with artists/galleries, though we make payments through VISCOPY where we can. We would like to use VISCOPY more; it's administratively easier*

*our policy is that we don't believe you should own anything outright*

Random comments from respondents who do not have a blanket policy governing the use of artistic work in their publication:

*horses for courses, no real policy ... if anything I suppose we consistently seek traditional exclusive right to publish only*

*mixed. Mostly we obtain traditional rights to publish, although now we are moving more and more to assignment of all rights. We pay more but it's easier to manage*

*we prepared a blanket policy which assigned all rights to us, but editors said it would be too hard to implement ... it seems to have fallen by the wayside... it has fallen in fact ... I doubt it was ever fully implemented. It's a bit ad hoc really*

*mixed policy – not centralised – most handled by contracts dept. Need to refer to rights manager but basically I'd say that for other than major works, where we think we might want to recycle content, we use traditional publishing licenses*

*question has not loomed large because we don't use a lot of artistic work. But now that you mention we should look at our contracts to clarify where we stand*

*we get mainly unsolicited articles which contain artwork – photographs, maps mainly as they are travel related. If we like the article we write and say we'll publish. We simply assume the author has obtained the rights to all the material offered to us ... never had a trouble ... should look at the issue more closely*

*if we have a policy, it's that we have one for our primary material and one for secondary ... we deal with photographs differently from the way we deal with other artistic work – it's a bit ad hoc ...*

*generally, illustrators are covered by a contract which assigns us all rights – we then re-license certain rights back to the artist, like returning original art, permission to use non-competitively ... seems to satisfy everyone. Photographs we treat differently – depends where we get them ... I suspect we are not as organised as we might be*

*we have an ad hoc approach – based on long standing relationships with photographers, illustrators. Mostly we phone and they give us negatives or original [art]. I assume we have all rights; they do too although there's no contract. It's never been an issue ...*

### **1.1.2 Rights obtained by publishers for the use of artistic work in publications**

Table 2 (overleaf) shows that only 29% of respondents obtain all copyright when using artistic work in their publication – 22% obtain it in writing, 7% obtain it verbally. However, the majority of respondents, 62%, clarify the rights they obtain in writing.

Table 2:  
Rights obtained by publishers for the use of artistic work in publications

	Publishers obtain assignment of all rights in writing	Publishers obtain limited rights in writing	Publishers have verbal agreement granting all rights	Publishers have verbal agreement for limited rights	Publishers make other arrangements
Primary school books	49%	44%	0%	8%	0%
Secondary school books	19%	77%	0%	4%	0%
TAFE/tertiary books	27%	73%	0%	0%	0%
Professional/reference	16%	6%	1%	62%	16%
Adult fiction/non-fiction books	18%	60%	10%	12%	0%
Children's	41%	32%	6%	13%	7%
Professional/specialist journals	9%	9%	9%	40%	33%
Trade magazines	20%	13%	3%	52%	13%
Government publications	33%	10%	20%	10%	27%
Advertising	27%	42%	22%	6%	3%
Corporate	0%	63%	10%	27%	0%
Newspapers	0%	55%	0%	5%	40%
<b>TOTAL</b>	<b>22%</b>	<b>40%</b>	<b>7%</b>	<b>20%</b>	<b>12%</b>

It is interesting to note that one year after changes to the Copyright Act, 39% of publishers still operate informally without written agreements with their contributors.

53% of government and 49% of advertising agencies claim to obtain all copyright to the artistic work used. Government publishers claim to be able to confirm verbal agreements either by file notes or confirming letter/email. Advertising agencies are unable to confirm their verbal agreements.

49% of responding primary school publishers obtain all copyright, and 47% of children's publishers. Those who responded 'other' included publishers using significant quantities of unsolicited handouts, and those whose artwork is prepared internally by employees.

In completing this section, one respondent commented that

*we own everything other than photographs – sometimes we might commission or organise verbally but we always follow up in writing. Illustrations are covered by assignments too – we get all rights then re-licence the originator*

This highlights a practice among some primary school publishers to obtain all rights so as to allow maximum use of artwork, while at the same time allowing the artist to retain the physical work and re-use it in non-competitive markets.

During the surveying, several publishers expressed the opinion that whether or not they owned the copyright in the material they publish, as they had financed the publications all income, from any source, should be retained by them.

Other comments from responding publishers which obtain written assignments of all rights:

*with most primary/secondary school illustrations we are moving away from verbal agreements to assignment ... with photo libraries it's different ... we are trying to centralise rights where ever possible to cope with the electronic environment ...*

*for all primary material and most secondary material. Exception is photographs we get from photo libraries. This change is relatively recent and probably over all is 50:50 with primary material, 60:40 secondary, moving fast to full assignment*

*with primary [books] we get assignments more and more for everything, other than photographs; less so in secondary although we are moving to acquiring as many rights as we can ... it's simpler in the long run even if it costs more originally ... is forcing a change to origination costs*

And from those obtaining written agreements which grant limited rights:

*often left to author to clear – we don't ask for individual clearances, our contract is to ensure that author obligations are met, especially in trade/academic.*

*It's up to them [the author] to sort out rights. Policy might be a little different with kids books, but basically we follow traditional publishing practice*

*with secondary school material we tend to acquire traditional exclusive rights – bit unclear about our rights to photocopying monies*

Although the majority of limited rights agreements are straight forward 'one use only', there are many possible variations. For example, variations can include 'one use in that book', 'book publishing world wide rights', 'non exclusive but no secondary rights', or, where an initial print run may be 2000 copies, 'rights are obtained for 15,000 copies so reprints can be faster and easier'.

One of those claiming to make verbal agreements that grant all rights commented, *we seek normal publishing rights, which for many of my staff is considered an assignment.*

Those making verbal agreements which grant limited, specific rights also commented:

*informal – between us and authors it is in writing, but we have no written agreements for illustrative material*

*we have always had good, casual relationships which work well*

*where we do use artistic work we commission verbally and always follow up with our contract*

### 1.1.3 Ability of publishers to verify verbal agreements with artistic creators

Table 3:  
Ability of publishers to verify verbal agreements with artistic creators

	Publishers able to verify verbal agreements	Publishers unable to verify verbal agreements
Primary school books	20%	80%
Secondary school books	80%	20%
TAFE/tertiary books	0%	0%
Professional/reference	33%	67%
Adult fiction/non-fiction books	60%	40%
Children's	75%	25%
Professional/specialist journals	36%	64%
Trade magazines	50%	50%
Government publications	33%	67%
Advertising	0%	100%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>53%</b>	<b>47%</b>

Table 3 shows that 53% of responding publishers claim they can verify verbal rights agreements. 47% offered 'informality' and 'strong relationships with visual creators' as reasons why 'editorial memory' is common practice. Those able to verify cite follow-up letters, formal orders and file notes as common verification methods, or, as one said: *discussions with assigning editors ... our word ... can't image it being a problem!*

Comments offered by respondents unable to verify verbal agreements if challenged, include:

*[informality] has been the practice for years; suppliers know the arrangement and seem happy with it*

*probably not able to verify, but we have well established practice and are well known by galleries and VISCOPY ... we are happy to pay for work, not happy to pay some of the high fees requested, but believe in the principle*

*the whole arrangement is very informal – authors provide photographs and illustrations, for example, and we assume they have all the rights. In other cases – most, probably – authors tell us the material they'd like to use and we get formal permission. Over all our publishing, we accept what the author tells us.*

*you mean we have to!*

#### 1.1.4 Staff compliance with publishers' copyright policies/practices

Table 4:  
Staff compliance with publishers' copyright policies/practices

	Publishers are satisfied that all staff comply with policies	Publishers not confident that all staff comply
Primary school books	100%	0%
Secondary school books	71%	29%
TAFE/tertiary books	88%	13%
Professional/reference	89%	11%
Adult fiction/non-fiction books	91%	9%
Children's	100%	0%
Professional/specialist journals	78%	22%
Trade magazines	88%	13%
Government publications	67%	33%
Advertising	100%	0%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>89%</b>	<b>11%</b>

Table 4 demonstrates an overwhelming majority of respondents seem satisfied that staff follow their organisation's copyright management practices as set down.

Of those not confident, one mentions not being fully aware because they regularly receive 'camera ready' copy from authors, while another conceded 'a general lack of understanding of copyright by staff'.

Another cited the problem of managing copyright over a multi-location publishing operation as a reason for being 'unsure'. Certainly, many large organisations, corporate and government particularly, have no centrally located body controlling publishing of print material. As one respondent said: *we have 4500 staff, spread over 150 geographic locations. All these staff are involved in information delivery. They cannot all be controlled and it requires constant education.*



There are a number of inconsistencies to note here. Corporates claim a high level of compliance, but at the same time concede a basic lack of knowledge of the issues, highlighting once again the problem of managing copyright over large organisations. Similarly, newspapers claim 100% compliance yet a number of artistic staff and freelancers interviewed for the survey commented: *I was employed without any rights discussion, there's an assumption we know, but no one ever tells us, and if it weren't for the MEAA, we'd know nothing.*

Publishers confident of a high level of staff compliance commented:

*staff know policy and comply. Only doubt would be other publisher's books we have bought and republished under our own imprint. I assume the rights position with them was clarified in the purchase contract ... should get someone to check*

*overall yes, but I suspect there is a different practice for different types of books within our business*

*any material used in our books must be prepared during normal work hours so copyright is clear ... we are very clear about informing staff of copyright issues ... it's part of our regular staff meeting agenda*

*I hope they do, although it's all pretty informal – this is something we really have to look at, if only to remind all staff*

### **1.1.5 Awareness by freelancers of publishers' copyright policies/practices**

As indicated in Table 5 overleaf, while a majority of respondents are satisfied that freelancers – and other suppliers of artistic material to publishers – are informed of copyright management policies, the incidence of advice varies significantly between different categories of publishers. As with Table 4, the responses from corporate and newspaper sectors are inconsistent.

Publishers responding 'yes' in Table 5 were also queried on compliance levels by freelancers. 80% of those responding 'yes, freelancers are made aware of our copyright management policies and practices' are also satisfied that freelancers are not only aware of their policy, but regularly comply with it.

The issue of freely available 'handout' material is a vexed one for many publishers. There is certainly an assumption by some that their corporate assets include photographic 'libraries' consisting largely of handout material.

**Table 5:**  
**Awareness by freelancers of publishers' copyright policies/practices**

	Publishers satisfied that freelancers are aware of policies	Publishers not satisfied that freelancers are aware of policies
Primary school books	57%	43%
Secondary school books	70%	30%
TAFE/tertiary books	100%	0%
Professional/reference	43%	57%
Adult fiction/non-fiction books	80%	20%
Children's	71%	29%
Professional/specialist journals	38%	63%
Trade magazines	75%	25%
Government publications	100%	0%
Advertising	50%	50%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>74%</b>	<b>26%</b>

Sample comments from publishers which always inform freelancers of their company's copyright policy regarding the use of artistic work:

*we have a written agreement, but we don't mention artistic rights in it – it's just generally covered, generally understood ...*

*with packagers it is part of contract – freelancers most often, I'd say, although with some long standing*

*I'm not so sure we do it as a routine, we probably assume they know because they have never given us reason to suspect otherwise*

*think they do although some editors, like [named high profile editor] often provides what he considers to be 'better' photographs than the author's – in those cases we simply assume the rights are with us – so I guess we'd have to say they don't always follow*

*we tell them ... sometimes in writing, but all are clear that anything and everything they do for us becomes our property*

And from respondents who don't advise freelancers ...

*because they are rarely involved in clearing/obtaining artistic works, it's not spelt out ... no need to shots [photos] we use come from PR companies and we've never thought it was necessary to consider the rights position .. always assumed promotional material was 'public'*

### 1.1.6 Informing publishers' staff and freelancers of copyright policies/practices

**Table 6:**  
Informing publishers' staff and freelancers of copyright policies/practices

	Publishers staff advised formally	Publishers staff advised informally
Primary school books	63%	38%
Secondary school books	43%	57%
TAFE/tertiary books	63%	38%
Professional/reference	22%	78%
Adult fiction/non-fiction books	27%	73%
Children's	43%	57%
Professional/specialist journals	14%	86%
Trade magazines	50%	50%
Government publications	67%	33%
Advertising	50%	50%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>48%</b>	<b>52%</b>

Responses to the question 'how do you inform staff and freelancers of your company's copyright management policies and practices' (summarised in Table 6) were varied. When collated into 'formal' and 'informal', less than half indicated that their artistic copyright management policies are clearly articulated in procedure manuals or as part of formal induction processes/employment contracts.

Newspaper publishers claim to be most rigorous at formally advising copyright management policy to those handling artistic work in publications. This does not sit well with Table 74, where examples of infringements indicate newspapers as one of the main 'culprits'.

Of the 52% of respondents in Table 6 who indicated that copyright management policy or copyright update information is advised informally, the majority offered either 'informal staff meetings', 'the occasional memo' or 'on a need to know' basis as the most common method of advising staff and freelancers.

Sixteen respondents indicated that they receive and circulate copyright management material sent from the APA, CAL, VISCOPY and/or the Copyright Council, and attend seminars run by them. A number of book publishers also mentioned the importance of the *Weekly Blue Newsletter* (a D W Thorpe publication which circulates throughout the industry) as a means of informally disseminating news on changes to the Copyright Act. However, it is obvious that material sent to specific people within a company regularly fails to circulate to the key 'practitioners' dealing with copyright on a day by day basis.

Responses supporting Table 6 include:

*we have some written material, but there is currently no mention of these changes to the Act – will have to revise to clarify*

*we have fortnightly staff meetings where such issues as copyright are discussed. I assume our staff advise freelancers when they are commissioning work– have not thought about it before*

*when the Act changed the changes were the subject of a whole meeting. We have updated our policies since for new staff. Don't know about advising freelancers, but it would be rare for them to clear permissions for artwork*

*on need-to-know basis*

*seminars and training, plus we have an editorial guide, but it only covers copyright generally – it's not strong on management of artistic work ... we will need to update it*

*we attend CAL seminars, professional group seminars articles, workshops ... we are in the process of developing corporate standards on handling copyright. I'm pretty satisfied we are on top of it.*

*at management meetings ... plus general discussion when something's in the 'Blue Newsletter'. Don't know how freelancers find out about the changes – I guess through the Society of Editors*

*staff told formally, I think we include a notice in our standard agreement for freelancers*

*APA/CAL notices, informal chats, if unsure we call for advice from other publishers*

*obviously not as tight as it should be!*

*policy is 'understood'. It's not in writing for staff – all freelancers get something in writing which makes it clear that the work they do for us is our copyright. Not sure that it covers artistic work*

*in truth, we have pretty well ignored it*

*The APA is good at sending notices, but probably they don't circulate as well as they should*

*sectional publishers are meant to be upgraded on a regular basis ... we do have occasional formal briefings from [large legal firm] ... I'd say staff are generally aware of changes, but there are no formal notices/advice. We are driven by deadlines – get the magazine out on time is the credo*

*we have had lots of discussions on the implications of these changes – plus lots of discussions about specific issues relating to indigenous art. Our whole management is very consultative based.*

*informal, APA, Copyright Council mailings – it is a difficult area ... something that is hard to get our minds around ... the material that arrives from CAL/APA is not very clear ... could do with better presentation*

*we have pretty close links with VISCOPY and read all their material*

*get APA stuff but don't see anything from CAL or VISCOPY. Didn't know VISCOPY existed ... I thought CAL represented everyone in the publishing process*

*in contract with outsiders, assumption is that internal staffers know these things*

*we don't advise anyone – we offer to publish material that's been submitted, we seek assurances that the author has the right to use the photographs and we use them. We would never resell them. If anyone writes to us seeking permission to reproduce a photo alone we refer to the author. If they seek permission to reproduce the whole article we assume we have the rights to grant it – but even then we might (probably would) refer them to the author. We try to keep it simple. We make no money from it ... never had any money from VISCOPY or CAL ...*

*copyright is part of our governance and disaster procedures manual which all staff are aware of – it reinforces how important copyright is to the business*

### **1.1.7 Use of formal training sessions to explain copyright policies/practices and changes to the Copyright Act**

While only 29% of respondents have formal training sessions on copyright management policy and practices, the figure rises to 50% for the TAFE/tertiary book publishing sectors.

With others categories, the results shown in Table 7 (overleaf) may be skewed because a number of respondents answering 'no', at the same time indicated that they regularly circulate copyright material and use internal email to update all staff, which might be seen as 'virtual' formal training.

**Table 7:**  
**Use of formal training sessions to explain copyright policies/practices and changes to the Copyright Act**

	Publishers with formal training sessions	Publishers without formal training sessions
Primary school books	44%	56%
Secondary school books	43%	57%
TAFE/tertiary books	50%	50%
Professional/reference	0%	100%
Adult fiction/non-fiction books	36%	64%
Children's	29%	71%
Professional/specialist journals	13%	88%
Trade magazines	13%	88%
Government publications	33%	67%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	0%	100%
<b>TOTAL</b>	<b>29%</b>	<b>71%</b>

Comments from respondents who have formal training sessions:

*management attends APA seminars on all copyright matters – then tells staff results at formal meetings ... we take it very seriously*

*when we prepared our new procedures – new contracts and new order forms that carry ownership notices – we involved full publishing teams so there was open discussion – don't know that we canvassed this matter in details, but end result is that all rights are pretty well clarified, especially for stuff published in last 12 months*

Some comments from those who do not have formal training sessions:

*not really. [Newspaper] staff voted to assign their copyright for monetary consideration prior to changes to the Act which gave rights to employers*

*no, but obviously we need to, especially for outside editors... what we do is informal ... we do issue instructions to our outside editors about the need to get full assignment of copyright in written material, but the situation with artwork is hazy ... better have it checked*

*informal advice as I try and visit each publishing centre/department as often as possible, unless there is a major change to the Act that may affect us, in which case I issue staff bulletins etc. We take it very seriously though, because it concerns Crown Copyright*

*no, we just talk about things – for example our revised contract is now open for discussion*

*we employ staff who know the Act and who ask questions. Also we oversee the work. Probably we make a number of assumptions ...*

*call CAL occasionally, although find it a bit legalistic so prefer to call APA, which usually suggests I call CAL ... We have also started calling VISCOPY about artistic work.*

*we pick it up ... we have an intranet site to which we post copyright news – it is regularly accessed*

### **1.1.8 Awareness by publishers of changes regarding ownership and statutory licence copying of photographs**

As shown in Table 8 (overleaf), 66% of respondents are basically aware of the changes to the Copyright Act regarding ownership of photographic works.

However, very few of the respondents were clear about the detail of the changes, especially those dealing on a regular basis with photographers. In fact, when questioned, fewer than 20% knew the detail of the changes.

Newspapers were most aware, followed by the primary and secondary school sectors (88% and 86% respectively), with only 33% of corporate (in house) publishers aware of the changes.

Comments from those aware of the changes included:

*knew about it, but not full implications ... we try to take guidance from the rest of the [corporate] group ... an informal information network*

*contracts department was aware, but at editorial level I think there was just a vague idea of the detail of the changes*

*passing interest – will now need to get my mind around it*

And from a respondent unaware of the changes: *recall something but took little/no notice as didn't think it affected us in any way. We might have been foolish as we get an increasing portion of income from CAL payments*

**Table 8:**  
**Awareness by publishers of changes regarding ownership and statutory licence copying of photographs**

	Publishers aware of changes in regard to ownership of photos	Publishers unaware of changes in regard to ownership of photos
Primary school books	88%	13%
Secondary school books	86%	14%
TAFE/tertiary books	63%	38%
Professional/reference	67%	33%
Adult fiction/non-fiction books	73%	27%
Children's	43%	57%
Professional/specialist journals	56%	44%
Trade magazines	63%	38%
Government publications	67%	33%
Advertising	50%	67%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>66%</b>	<b>34%</b>

In addition to being asked about changes as they affect ownership of photographs, awareness of respondents to the changes in regard to s135ZM (see Appendix 5) was also explored.

Table 9 (overleaf) shows that only 44% of respondents were aware of the s135ZM changes to the Copyright Act.

While newspapers respondents were fully aware, there was no awareness within the corporate publishing sector and very low awareness in the TAFE and professional reference sectors (14% and 22% respectively).

There appears to be a direct correlation between awareness of s135ZM changes and active involvement in publishers' trade association. Membership alone seems not to be sufficient a trigger for understanding. The majority of 'yes' responding publishers have executives who are office holders of industry organisations.



**Table 9:**  
**Awareness by publishers of s135ZM amendments to the Copyright Act**

	Publishers aware of changes in regard to s135ZM copying in education	Publishers unaware of changes in regard to s135ZM copying in education
Primary school books	75%	25%
Secondary school books	57%	43%
TAFE/tertiary books	14%	86%
Professional/reference	22%	78%
Adult fiction/non-fiction books	58%	42%
Children's	43%	57%
Professional/specialist journals	33%	67%
Trade magazines	38%	63%
Government publications	67%	33%
Advertising	25%	75%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>44%</b>	<b>56%</b>

Comments from respondents aware of s135ZM changes:

*yes, but not the details. I think it's good that artists get some money, but this seems a very unfair way to do because artwork often is such a small part of what is copied. I always thought it would be sorted before now*

*yes, but wasn't sure it covered overseas titles. Also have been waiting for help/advice from APA/CAL – probably fair to say we didn't realise the implications for publishers, authors and illustrators ... it's really a pretty fundamental change, isn't it*

*yes, but not seen as editorial issue because editorial doesn't get to see CAL payments ... they are done by accounts*

*yes, but probably not the full implications – the whole thing seems such a nightmare to administer – will we get a lead from CAL or the government on the best way to manage the process?*

*when we started, we gave author 100% of all CAL monies. We then changed and have been splitting 50:50. Had no idea that publisher's/author's revenue would be cut – thought the author share would be used to pay the artists – guess I hadn't thought it through properly. Probably not too*

*important for us because we get little from CAL, but for bigger publishers it must be an issue. Surely there should be extra funds to pay for this – it's a tax on authors and publishers, isn't it*

*not the full implications – for example we have entered into strategic partnerships with holders of large picture libraries, but we have got exclusive license – no mention of photocopying money ... will have to clarify*

And a comment from a publisher unaware of the changes:

*I knew there were changes but didn't think to this level – mainly because we get small CAL payments it hardly seems worth worrying about – although we know that there is massive copying of our magazines within schools for projects etc. We take the view that if the schools subscribe direct, we don't care if they copy – we probably should care, we don't*

### 1.1.9 Changes to publishers' copyright policies/practices since the Copyright Act was amended in 1998

**Table 10:**  
Changes to publishers' copyright policies/practices since the Copyright Act was amended

	Publishers policies/practices changed	Publishers policies/practices unchanged
Primary school books	0%	100%
Secondary school books	14%	86%
TAFE/tertiary books	0%	100%
Professional/reference	25%	78%
Adult fiction/non-fiction books	0%	100%
Children's	29%	71%
Professional/specialist journals	11%	89%
Trade magazines	25%	75%
Government publications	0%	100%
Advertising	25%	75%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>22%</b>	<b>78%</b>

Table 10 shows that only 22% of respondents have amended or changed their copyright management practices since the amendments to the Act in July 1998. These results bear out the general level of awareness of changes in regard to payment for the use of artistic material (Table 9).

Again, newspapers claim to have changed their practices since the Act was amended saying that they are progressively moving to obtain licences from freelance journalists and photographers. An editor of a newspaper subsidiary magazine reinforced these changes with the comment: *since the change we have tossed out our old photo library and have started again.*

Although 75% of advertising agencies claim not to have changed their practices, anecdotal evidence is that photographers asserting their rights have encouraged agencies to look at ownership of their own material. In fact, one of the agencies surveyed is now advising clients that the agency owns copyright in all their 'creative'. This is a contentious issue. Legal advice to AGDA members is that the person interpreting the information, and who creates the embodiment of the ideas, is the artist (not an advertising agency creative).

A further question was generated here: *We are having discussions regarding school photographs – if a school commissions, is it Crown copyright, the school's copyright, the teacher/photographer's copyright, the kids' copyright?*

Respondents whose practices had not changed since the Act was amended were then asked if changes were likely to be implemented in the near future.

**Table 11:**  
Likelihood of publishers changing copyright policies/practices in the foreseeable future

	Publishers likely to change policies in the near future	Publishers unlikely to change policies in the near future
Primary school books	75%	25%
Secondary school books	100%	0%
TAFE/tertiary books	25%	75%
Professional/reference	29%	71%
Adult fiction/non-fiction books	27%	73%
Children's	33%	67%
Professional/specialist journals	75%	25%
Trade magazines	17%	83%
Government publications	67%	33%
Advertising	25%	75%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>50%</b>	<b>50%</b>

As indicated in Table 11, half the respondents intend to change or at least reconsider their current copyright management practices in regard to the use of artistic work in their publications. Only trade magazine

publishers seem relaxed with their current practices, with only 17% indicating an intention to change, probably because, generally speaking, they are quite happy for the artist to retain the rights.

Only one of the respondents indicated that they will seek to get full rights, even if it means they must pay more up front. The majority of others is more concerned with 'doing the right thing' and therefore intend to implement changes that will clarify the rights position.

Some publishers are certainly looking for guidance in how to proceed, summarised by one respondent: *we will wait until recommendations/suggestions come from CAL/APA/VISCOPY – hope they hurry!*

One respondent not proposing to change current arrangements said, *We are comfortable we cover everything – our contracts refer specifically to photocopying.*

### 1.1.10 Changes to publishers' copyright policies/practices over the past 20 years

**Table 12:**  
Changes to publishers' copyright policies/practices over the past 20 years

	Publishers aware that there have been changes over the past 20 years	Publishers unaware that there have been changes over the past 20 years
Primary school books	50%	50%
Secondary school books	43%	57%
TAFE/tertiary books	50%	50%
Professional/reference	33%	67%
Adult fiction/non-fiction books	27%	73%
Children's	67%	33%
Professional/specialist journals	22%	78%
Trade magazines	50%	50%
Government publications	67%	33%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>42%</b>	<b>58%</b>

Table 12 shows that 42% of responding publishers are aware of significant changes to their organisation's

copyright management practices over the last 20 years – usually within the last five years given the limited corporate memory of most respondents.

Comment from those aware of changes to copyright management practices:

*tightening all round; awareness all around written agreements introduced ... we generally have to manage in a better, in a more systemised manner*

*we are very careful about everything being written down, whether or not it covers all or limited rights, so changes are made each time the Act changes*

*tinkering at the edges... but I think our contracts dept is working on redrafting copyright advice to staff*

*in 1998 introduced written contracts (which subsequently fell by the wayside!)*

*Govt. standards introduced in early 90s, before that nothing specific*

*in last six years -- copyright is now managed centrally and fully documented*

*electronic rights now being retained by authors in some cases*

*in the last 12 months have tried to tidy up identification of 3rd party material*

And comments on changes likely to be introduced in the near future:

*more documentation, better paper trail*

*move to assignment of all rights to publisher, clarify that all CAL payments are covered by separate clause, currently 50:50 split with author – need to include payments to artists ... don't mind so long as we hold all rights ... recognise that we'll probably have to pay higher origination costs*

*we worked out a way of dealing with VISCOPY. We make a list of the artists we want to use – we cross check with VISCOPY, we then get clearance. Probably something like 10%, growing slowly. It's a pretty good system. We will refine it over the next year*

*move more to acquire all rights – happened to a large extent in primary, around 60% in secondary*

*until recently all editorial was free handout material with understanding that architects controlled these images ... will check that that's the case*

*use of in-house photographers will be encouraged*

### 1.1.11 Regular use of artistic work by Australian publishers

*It should be noted that Table 13 differs from other tables in that it shows actual number of respondents regularly using each art form.*

**Table 13:**  
Regular use of artistic work by Australian publishers

	Photos used regularly	Fine art used regularly	Line art/ illustrations used regularly	Graphs/ tables used regularly	Cartoons used regularly	Maps/ plans used regularly	Other' used regularly
Primary school books	8	2	8	7	2	3	0
Secondary school books	7	2	7	6	6	4	0
TAFE/tertiary books	7	3	5	6	4	2	2
Professional/reference	8	1	6	6	2	4	0
Adult fiction/non-fiction books	10	4	8	3	1	4	1
Children's	5	0	7	1	3	0	0
Professional/specialist journals	9	2	5	5	1	5	0
Trade magazines	8	1	5	5	2	4	2
Government publications	3	0	3	2	0	1	1
Advertising	4	0	1	2	0	1	0
Corporate	3	0	2	2	1	2	0
Newspapers	2	0	2	2	2	2	1
<b>TOTAL</b>	<b>74</b>	<b>15</b>	<b>59</b>	<b>47</b>	<b>24</b>	<b>32</b>	<b>7</b>
<b>% of Australian publishers using artistic material regularly</b>	<b>95%</b>	<b>19%</b>	<b>76%</b>	<b>60%</b>	<b>31%</b>	<b>41%</b>	<b>9%</b>

Table 13 shows that photographs are the most commonly used form of artistic work in Australian publications, with 95% of responding publishers using them regularly.

Line drawings/illustrations are the next most commonly used art form, with 76% of respondents using them regularly, followed by the most contentious area of the category of artistic work, that of graphs/tables, because of queries about their 'artistic' worth.

9% of respondents indicated regular use of 'other' forms of artistic work, usually screen shots of computer programs and computer generated illustrations

### 1.1.12 Responsibility for fees relating to the use of artistic works in publications

As indicated in Table 14 overleaf, 68% of publishers pay all fees associated with the use of artistic work in their publications, with 100% payment by trade magazine publishers, government, corporate and newspaper

**Table 14:**  
**Responsibility for fees relating to the use of artistic works in publications**

	Publishers carry the cost of all fees associated with the use of artistic work in publications	Authors carry the cost of all fees associated with the use of artistic work in publications
Primary school books	57%	43%
Secondary school books	29%	71%
TAFE/tertiary books	75%	25%
Professional/reference	78%	22%
Adult fiction/non-fiction books	52%	48%
Children's	57%	43%
Professional/specialist journals	48%	53%
Trade magazines	100%	0%
Government publications	100%	0%
Advertising	25%	75%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>68%</b>	<b>32%</b>

publishers, dropping to 25% payment by advertising agencies (where these payments would be then recharged to the client).

Even where fees are carried by authors (generally offset against future earnings or on a shared royalty basis for highly illustrated work) book publishers regularly pay for artwork used on covers -- 'company covers, author internals' seems to be practised in a number of book publishing categories.

While a contract may specify that the author pays all fees associated with internal artwork, or fees to a certain \$ limit, practice is that in many instances the publisher does not exercise that particular right. It may be through sympathy for an author's financial situation, the author generates high income for the publishing house, or the book has failed to meet sales expectations.

Comments from those who responded 'publisher always pays fees':

*always pay for covers, for content the author provides and if we had to recast/redraw [the author's rough art] the company would pay*

*we use a lot of screen dumps. We don't ask permission so there are no fees to be paid!*

*company pays for all b&w, incidental and cover art – otherwise author, especially if full colour, highly illustrated where author pays or photographer gets share of royalty*

*it differs across the publishing program -- for primary the company >90%, in secondary about 50/50, in tertiary generally the author*

Comments from those who responded 'author/journalist pays direct, or charges are paid by the publisher but recharged to client or author:

*children's [highly illustrated] books most often covered by the contract on a 50:50 royalty split*

*illustrator is co-author sharing royalties on 50:50 basis*

*we try to recharge as much as possible to keep the price of the book down*

*[advertising] agency always pays the bills but always recharge these costs to the client*

### 1.1.13 Syndication by publishers of artistic and other content

**Table 15:**  
Syndication by publishers of artistic and other content

	Publishers content is syndicated	Publishers content is not syndicated
Primary school books	25%	75%
Secondary school books	29%	71%
TAFE/tertiary books	25%	75%
Professional/reference	22%	78%
Adult fiction/non-fiction books	45%	55%
Children's	43%	57%
Professional/specialist journals	25%	75%
Trade magazines	38%	63%
Government publications	33%	67%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>32%</b>	<b>68%</b>



Over all categories, only 32% of publishers syndicate content from their publications (Table 15). With newspapers the figure is 100%.

A number of respondents indicated that 'reviews' and 'limited promotional material' are syndicated, both nationally and internationally, but in most cases no revenue is received for these uses.

Where syndication does occur, revenue is generally shared with authors and artists according to specific terms agreed, usually 50:50.

Although the percentages for the education categories are low, there is a trend by government education publishers to accelerate the commercialisation of their intellectual property. This is being driven by awareness of massive infringement of their works by others within their own sector. So, rather than let others exploit it, they'll exploit it themselves.

Some comments from those who syndicate their publisher material:

*I let them [newspaper] use whatever content they like ... it's all promotion for us ... we get no income from it. Wouldn't let them use the whole book of course, but if they want to do feature review, it's good for us. Don't know if this is what you mean by syndication*

*very little. If we did any income would be distributed in line with author's contract*

*yes, only a small amount, money divided on ad hoc basis between author and illustrator ... depends on what it is that we syndicate ... mainly it is promotional 'teasers'*

*yes, and if visual material, company running the extract deals directly with the artists*

*we syndicate to local and overseas newspapers, magazines and periodicals – company takes revenue unless there is specific contract otherwise*

#### **1.1.14 Current or anticipated publishing of artistic work on the World Wide Web**

While 70% of respondents report that they are currently publishing on the World Wide Web (Table 16 overleaf), the majority of this is in the form of promotional 'teasers'.

The issue of rights to publish content – artistic and other – on the web was raised by a number of respondents, each seeking clarification.

**Table 16:**  
**Current or anticipated publishing of artistic work on the World Wide Web**

	Publishers currently or soon intending to publish on the Web	Publishers not currently and not intending soon to publish on the Web
Primary school books	38%	63%
Secondary school books	43%	57%
TAFE/tertiary books	88%	13%
Professional/reference	78%	22%
Adult fiction/non-fiction books	36%	64%
Children's	57%	43%
Professional/specialist journals	50%	50%
Trade magazines	100%	0%
Government publications	100%	0%
Advertising	50%	50%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>70%</b>	<b>30%</b>

Comments from those currently publishing or intending to publish material on the Web

*currently not full text, but we are exploring the eBooks sub licence*

*some limited use of full text on Lexis.Nexus, but we recognise that the copyright issues has to be resolved first it would be no more than 6 titles, and probably limit content*

*much discussion taking place – inevitable we will .. probably in the near future*

*some full text – agreements cover all rights, except the question of screen dumps which sometimes are reproduced*

*full text only where we have full rights and even then we are half-hearted. We still can't resolve an appropriate pricing structure for 'bits' of a book, rather than the whole*

*but only promotional material and some teachers material – nothing artistic – well, maybe a very little through Bite but they clear the rights for us*

## 1.2 PHOTOGRAPHS

### 1.2.1 Negotiating the use of photographs in Australian publications

Table 17:

Negotiating the use of photographs in Australian publications

	Publishers art/design departments obtain permission or commission	Publishers rights/ permissions officers get permission or commission	Publishers in house editors obtain permission or commission	Freelance editors obtain permission or commission	Authors obtain permission or commission	Others' obtain permission or commission
Primary school books	30%	28%	21%	0%	21%	0%
Secondary school books	0%	45%	45%	0%	10%	0%
TAFE/tertiary books	0%	41%	19%	14%	26%	0%
Professional/reference	29%	9%	36%	0%	24%	3%
Adult fiction/non-fiction books	25%	6%	20%	1%	38%	10%
Children's	15%	29%	42%	6%	8%	0%
Professional/specialist journals	24%	2%	27%	0%	38%	9%
Trade magazines	43%	6%	39%	1%	0%	11%
Government publications	37%	0%	33%	0%	30%	0%
Advertising	80%	0%	0%	0%	0%	20%
Corporate	73%	7%	7%	2%	10%	2%
Newspapers	0%	67%	0%	0%	0%	33%
<b>TOTAL</b>	<b>30%</b>	<b>20%</b>	<b>24%</b>	<b>2%</b>	<b>17%</b>	<b>7%</b>

Table 17 shows that 74% of publishers use in-house staff to obtain permission to use photographic material in their publications.

Only 17% expect authors to clear permissions; 2% freelance editors. The 7% of respondents who nominated 'other' indicated the use of curators, account managers, etc.

It can fairly be assumed that for the 30% of negotiation by art/design departments, copyright would rarely be discussed.

Although publishers may charge authors with responsibility for obtaining permissions or commissions, the publisher often does not 'audit' the author's formal copyright clearances.

## 1.2.2 Sources of photographs used in publications

Table 18:  
Sources of photographs used in publications

	Publishers obtain photos from photo libraries	Publishers commission freelancers to take new photos	Publishers use freelancers own stock photos	In house staff take photos as required	Authors take new photos or provide photos to publishers	Publishers in house stock is used	Publishers use handouts provided no charge	Other
Primary school books	24%	25%	0%	14%	14%	23%	0%	1%
Secondary school books	56%	10%	2%	6%	18%	2%	6%	0%
TAFE/tertiary books	20%	16%	19%	10%	18%	8%	6%	2%
Professional/reference	18%	10%	2%	10%	18%	11%	19%	13%
Adult fiction/non-fiction books	40%	15%	3%	13%	21%	1%	0%	8%
Children's	23%	33%	0%	2%	24%	4%	14%	0%
Professional/specialist journals	1%	1%	1%	4%	24%	2%	41%	26%
Trade magazines	21%	31%	10%	8%	4%	15%	7%	5%
Government publications	2%	1%	0%	73%	17%	7%	0%	0%
Advertising	31%	59%	0%	0%	0%	3%	1%	7%
Corporate	18%	33%	2%	12%	8%	12%	15%	0%
Newspapers	5%	9%	0%	78%	0%	8%	1%	0%
<b>TOTAL</b>	<b>24%</b>	<b>19%</b>	<b>4%</b>	<b>11%</b>	<b>16%</b>	<b>8%</b>	<b>11%</b>	<b>7%</b>

As indicated in Table 18, photo libraries are the largest single suppliers of photographs to Australian publishers (24%), but by no means do they dominate the supply chain, except for the secondary school and adult trade book sectors.

While the advertising industry is a major client of photo libraries (31%), they say that 59% of the photographic material they use is commissioned. This would be disputed by the photo libraries which told the consultants that the 'industry standard' for advertising is now 50% photo libraries, 50% commissioned. This reflects a recent understanding by advertising agencies that photo libraries regularly commission very high quality work themselves to ensure 'fresh and saleable' stock.

Photo libraries might also dispute the professional specialist journal result of 1%, with one major photo library alone selling \$100,000 of material per year to two journals. While there are always anomalies within a survey, the consultants believe that the survey results remain valid because publishers operating in the niche, specialist professional journal market generally have limited potential circulation. Therefore their budgets are correspondingly restrained. They rely on free material. This is reflected by the 41% use of handouts and 26% use of 'other' – royalty free CDs, historical societies, material 'from the artist', libraries

and galleries, screen shots, from professional bodies and institutes, and 'promotional material for exhibitions'.

Those using royalty free CDs seem most often to be doing so under the assumption that 'royalty free' means 'copyright free'. While these terms are somewhat ambiguous, in the opinion of CAL's corporate lawyer they are most often used as marketing terms rather than in any strict legal sense.

When asked to clarify the meaning of the terms 'royalty free' and 'copyright free', as used in two contracts accompanying two American CD ROMs of artistic works (eg PhotoDisc) sighted by the consultants and used increasingly by Australian publishers, CAL's legal opinion was:

*if an Australian publisher uses a photograph sourced from an American CD ROM in a book, the CD ROM is sold as 'royalty free' or 'copyright free', and the Australian publishers' book is photocopied under s135ZM, the American CD ROM producer may be entitled to receive s135ZM payments as owner of the photograph. The entitlement of the American publisher would depend on the licensing arrangements they had with the original photographer and whether or not the photograph was still protected by copyright. However, it is clear that the Australian publisher would have no entitlement to any s135ZM payments, as they have acquired no copyright rights by using the CD ROM photograph or republishing it.*

Other than the advertising industry, the other important employer of freelance photographers (either being commissioned or operating their own stock libraries) are the primary school, children's, trade magazine, TAFE/tertiary and corporate sectors.

It should be noted, however, that for a number of publishers, photographic use is largely restricted to cover shots, traditionally paid by publishers – 'externals the publisher, internals the authors'. This is noted because a number of publishers are of the view that covers are rarely photocopied by educational institutions. As one commented, 'as we use photographs predominantly on covers, the changes to the Copyright Act won't affect our CAL payments'. This clearly is not the case. In primary, for example, a number of artists interviewed spoke of knowing teachers (usually teacher/librarians) who regularly copy jackets and content for classroom activity.

Because of the nature of government publications, many of which are generated 'in the field', most photographs are taken by staff members who are also preparing the publications.

The use of in-house photo stock is high in the primary sector (23%). Unlike photo libraries which are constantly replenishing their stock, the consultants found publishers in the primary sector tend to recycle previously commissioned and used material, which accounts for this high figure.

In addition, the issue of moral rights, particularly with indigenous material, leads to publishers preferring to use images that they have in house where they are confident about both the source and integrity.

Some comments from publishers responding to this section:

commissioning freelancers –

*covers mainly, usually use a young photographer ... students sometimes, its good for their folio and does not cost us too much*

photos supplied by the author --

*I guess we are slightly unusual in that pics are supplied by the authors of articles we publish – they send the lot to us and we decide whether or not to publish. We assume they have the right to allow us to use the pics*

*most often the author provides classroom shots – shots of kids work etc*

in house photo stock –

*probably our own stock accounts for 60% of usage ... we own the rights, or at least I'm pretty sure we do ...*

handouts and other PR material --

*we use retained handouts – probably about 75% of total photos used*

*handouts are used especially in secondary books we publish ... often the pics may come with the ms – all sorts of things, but the author does warrant that they have the right to use*

### **1.2.3 Nature of publishers' agreements with photo libraries and photographer agents**

As shown in Table 19 (overleaf), the majority of publishers (98%) using photo libraries to source photographs for use in their publications comply with the photo libraries' terms and conditions after discussions 'at the fringe'. These include negotiating over price, extension of time period rights, inclusion of second and subsequent edition rights, and occasionally electronic rights, etc.

None of the photo libraries contacted or discussed with responding publishers are selling 'secondary' rights. The most significant photo library pointed out that 'secondary rights' do not exist in law. Therefore, they are not negotiable.

Although 2% of publishers claim to obtain some limited rights (restricted to government/children's sectors), it should be noted that although the table shows 2% of publishers claim to use their own written agreements,

this figure is mainly from one very large publisher. None was able to demonstrate negotiation over 'core' terms and conditions, certainly not a change in ownership of copyright.

**Table 19:**  
**Nature of publishers' agreements with photo libraries and photographer agents**

	Publishers comply with terms and conditions	Publishers obtain assignment from them for all rights	Publishers obtain limited rights in writing	Publishers obtain limited rights verbally
Primary school books	100%	0%	0%	0%
Secondary school books	100%	0%	0%	0%
TAFE/tertiary books	100%	0%	0%	0%
Professional/reference	100%	0%	0%	0%
Adult fiction/non-fiction books	100%	0%	0%	0%
Children's	82%	0%	18%	0%
Professional/specialist journals	100%	0%	0%	0%
Trade magazines	100%	0%	0%	0%
Government publications	95%	0%	5%	0%
Advertising	100%	0%	0%	0%
Corporate	100%	0%	0%	0%
Newspapers	100%	0%	0%	0%
<b>TOTAL</b>	<b>98%</b>	<b>0%</b>	<b>2%</b>	<b>0%</b>

Now that photographers own their own copyright, the top editorial photographers are reclaiming their material from publishers and either establishing their own libraries, or signing with larger and/or niche photo libraries. This will raise the level of material available from photo libraries and increase their hold on the market.

#### **1.2.4 Nature of publisher agreements with freelance photographers**

Table 20 (overleaf) shows that 54% of publishers confirm their contractual arrangements with freelance photographers in writing, 28% obtaining an assignment of all rights, 26% obtaining limited, specific rights.

Over all categories, only 45% claim to obtain all rights, either in writing or verbally, with government sector respondents claiming that in all cases all rights are obtained verbally. Of course, the government sector commissions very few photographers (1% -- see Table 18). The same applies to the professional/reference sector which only commissions 10%.

The pattern of verbally commissioning freelance photographers for one-off rights remains strongest with publishers of professional/reference books (75%) and professional/specialist journals (67%), lowest with primary and government publishers, and advertising agencies, none of which claims to verbally commission for one-off reproduction rights.

**Table 20:**  
**Nature of publisher agreements with freelance photographers**

	Publishers Verbally Commission Freelancers for one-off repro rights	Publishers verbally commission freelancers for all rights	Publishers obtain written assignment of copyright	Publishers obtain limited, specific rights in writing
Primary school books	0%	14%	71%	14%
Secondary school books	29%	0%	37%	34%
TAFE/tertiary books	20%	16%	34%	30%
Professional/reference	75%	0%	25%	0%
Adult fiction/non-fiction books	29%	14%	4%	53%
Children's	40%	20%	20%	20%
Professional/specialist journals	67%	0%	0%	33%
Trade magazines	33%	17%	50%	0%
Government publications	0%	100%	0%	0%
Advertising	0%	50%	0%	50%
Corporate	33%	33%	0%	33%
Newspapers	17%	17%	67%	0%
<b>TOTAL</b>	<b>29%</b>	<b>17%</b>	<b>28%</b>	<b>26%</b>

The high level of assignment of copyright claimed by newspapers is, however, governed by the MEAA deal which reserves secondary rights for photocopying for a large slice of the industry.

Although 67% of trade magazines claim all rights when commissioning, they often will not act on those rights without consultation with the photographer. This is well described by one respondent: *we commission over the phone, and we specifically get approval for any re-use.*

### 1.2.5 Payment for the acquisition/use of photographs

77% of publishers pay all fees for the use of photos (Table 21 overleaf). This ranges from a high of 100% company payment by newspapers, corporates, trade magazines and government, down to 36% by publishers of professional/specialist journals.



**Table 21:**  
**Payment for the acquisition/use of photographs**

	Publishers pay all fees for use of photos	Authors pay all fees for use of photos
Primary school books	91%	9%
Secondary school books	58%	42%
TAFE/tertiary books	83%	17%
Professional/reference	78%	23%
Adult fiction/non-fiction books	46%	54%
Children's	54%	46%
Professional/specialist journals	36%	64%
Trade magazines	100%	0%
Government publications	100%	0%
Advertising	75%	25%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>77%</b>	<b>23%</b>

Although this category says authors pay for 64%, it more correctly is that the 'publisher does not pay for 64%'. If any fees are applicable – and in this sector this is rare – the author would pay. The 9% of 'author pays' in the primary school sector often relates to the supply of material gathered by authors overseas, eg LOTE and Asian studies photographs.

### **1.2.6 Awareness of 1998 changes to the Copyright Act regarding photographs**

Table 22 (overleaf) shows that the majority of publishers (71%) claim to be aware of the July 1998 changes to the Copyright Act insofar as they affect photographs. This drops from a high of 100% awareness claimed by newspapers to a much lower 33% for corporate in-house publications.

As previously commented on, while most publishers claim to be aware of the 1998 changes to the Copyright Act regarding the ownership of photographs, and 44% say they know about remuneration for s135ZM photocopying of photographs under statutory licence, the level of detailed knowledge is clearly an issue. A significant number of respondents claiming awareness of the changes, when queried by the consultants, added 'but not fully', 'but not the full implications', or 'I know the Act changed, but didn't know how'.

**Table 22:**  
**Awareness of 1998 changes to the Copyright Act regarding photographs**

	Publishers Aware of Changes Regarding the Ownership of Photos	Publishers not aware of changes regarding the ownership of photos
Primary school books	75%	25%
Secondary school books	86%	14%
TAFE/tertiary books	86%	14%
Professional/reference	75%	25%
Adult fiction/non-fiction books	82%	18%
Children's	60%	40%
Professional/specialist journals	67%	33%
Trade magazines	75%	25%
Government publications	67%	33%
Advertising	50%	50%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>71%</b>	<b>29%</b>

There is an obvious inconsistency between Tables 8 and 9, and Table 22. This confirms that there is a high level of confusion regarding changes to the Copyright Act within the publishing industry.

Comments from publishers claiming to be aware of the changes to the Copyright Act in July 1998 insofar as they affect photographs

*knew about it from reading, but not the full implications for this business which relies on CAL payments*

*saw all the material from CAL/APA but it hadn't really sunk in until now*

*yes, but not fully – took at face value, ie ownership changed. Didn't think about the money aspect*

*yes, but not implications ... wish we had because we may have tightened or at least clarified our practices earlier*

*rights manager was aware, I suspect few others in the business were*

And from a publisher unaware of the changes: *first I've heard of it – where can I find more details?*

## 1.2.7 Changes to copyright management practice relating to the use of photographs

**Table 23:**  
Changes to copyright management practice relating to the use of photographs

	Publishers have amended policies since the Act was changed	Publishers have not amended policies since the Act was changed
Primary school books	0%	100%
Secondary school books	14%	86%
TAFE/tertiary books	50%	50%
Professional/reference	25%	75%
Adult fiction/non-fiction books	0%	100%
Children's	0%	100%
Professional/specialist journals	0%	100%
Trade magazines	25%	75%
Government publications	33%	67%
Advertising	50%	50%
Corporate	33%	67%
Newspapers	100%	0%
<b>TOTAL</b>	<b>28%</b>	<b>72%</b>

Table 23 shows that while 72% of responding publishers have not changed their copyright management practices since the Copyright Act was amended in July 1998, all newspaper publishers have introduced new practices, as has a high proportion of TAFE publishers and advertising agencies. Trade publishers (adult fiction/non-fiction), children's, primary school and professional/specialist journal publishers have made no changes at all to their practices.

Of the publishers which have not changed their policies since the Act was amended in July 1998, 57% claim that they will 'in the near future'. A significant number of respondents noted their intention to change policies, or at least look carefully at them, flowed directly as a consequence of the surveying. *Hadn't thought about it until you started asking all these questions*, was a fairly common comment.

Comments from publishers indicating that their practices have changed since the Act was amended.

*we now have written assignment for all material we use ... we hope to publish on the internet but can't unless all rights are ours. We are willing to pay more up front ...*

*have clarified who actually owns the rights for all content – we now separate text and art*

*we are trying to be clearer – it's one of the reasons we bought the royalty free CD – we will now have to tighten even further – get a written agreement for all rights, which is a pain as informality has worked so well in the past*

*we now attempt to get full assignment of all rights, especially for internals. If not, we at least clarify the position in our correspondence*

*introduced written contracts for everything, which is tedious and affects long-standing relationships which were always informal. Makes it look like we don't trust our contributors*

*no longer own copyright on commissioned work*

And from those whose copyright practices have not changed since the Act was amended

*no change, but waiting for advice on what to do to make sure we know who owns what*

*they are changing all the time – nothing specifically changed when the Act did -- tend to follow discussions as we plan electronic publishing*

*will get advice ... like to change to ensure all artistic rights fit into our 'full assignment' agreements ... probably will agree to pay more for rights at the beginning*

*[the changes] seem an administrative nightmare ... will there be training offered to help publishers cope with the changes?*

*have asked for clause to be added to contract to clarify revenue from statutory copying ... want it spelt out so there is no disagreement with authors*

*until you asked, I wasn't aware of the concept of secondary rights ... have to give greater attention to them*

*more paperwork ... seek agreements, especially we need to clarify material received from PR companies ... we must clarify*

*after this survey, I think we have to open the whole matter internally and really ensure our systems are in place so we can easily track who's entitled to what payments*

*if anything we must be more vigilant – especially with secondary school stuff which is published under such [time] pressure that some admin details slip ...*

*have to extend time frame and ensure we cover reprint rights for content – not so worried about covers which I guess are rarely copied*

*need to clarify the [rights] position of photographs brought to us by the author .. have always assumed copyright was their [authors] which they assign to us ... will have to ask specifically*

*will now need more written contracts, which is a pity ... more work for lawyers, less money for writers*

*have to insist that all rights are clarified in writing – have to stop the informal commissioning – a company like ours must be clear ... will arrange a training session with contracts department*

*clearly we should have been thinking about this earlier – why were we not told ...*

*will look at it ... prudent to do so as part of normal governance ... wouldn't want directors exposed*

Comments from those whose policies have not changed, and probably will not in the near future

*only in the sense of revisiting in response to this survey to ensure rights are as clear as possible so there no confusion on the part of authors and artists ... does one take priority over the other ... will CAL send money to artists, the way they do authors?*

*seems like there might be some question of ownership of children's artwork – who owns the rights to a classroom shot, ie a photo of children's work which we use all the time in our books?*

*will run editorial in a future issue on copyright practices for artists, and at the same time revisit our own procedures*

*would normally keep all income for photocopying of commissioned shots ... have to change our whole thinking*

*need to clarify screen shots. Who owns the rights? The designer? The software publisher?*

*unlikely to change, but will get advice ... reality is that neither the [advertising] agency nor the photographer will want to use the image again, so most photographers wouldn't want to get into a barney with the client over a point of ideology ...*

Confirming what many artists say, a large national government-affiliated publisher said: *we know much of our material is reproduced throughout the TAFE system without rights clearance.* This same publisher is now attempting to run acknowledgement pages on reverse of title page, so who owns what is clear.

### 1.3

### ARTWORKS (FINE ART)

#### 1.3.1

#### Negotiating for the use of fine art in publications

Table 24:  
Negotiating for the use of fine art in publications

	Publisher's art/design department negotiates for artwork	Publishers Rights/ Permissions Department Negotiates for artwork	Publishers Editor Negotiates for artwork	Author negotiates for artwork
Primary school books	0%	50%	0%	50%
Secondary school books	0%	100%	0%	0%
TAFE/tertiary books	0%	67%	33%	0%
Professional/reference	0%	0%	85%	15%
Adult fiction/non-fiction books	25%	35%	28%	13%
Children's	0%	0%	0%	0%
Professional/specialist journals	0%	33%	0%	67%
Trade magazines	70%	0%	30%	0%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	0%	0%	0%	0%
Newspapers	0%	0%	0%	0%
<b>TOTAL</b>	<b>14%</b>	<b>41%</b>	<b>25%</b>	<b>20%</b>

As shown in Table 24, 80% of publishers negotiate direct to obtain fine art to be used in their publications. Only in 20% of cases do authors obtain material, especially art based professional/specialist journals.

In the primary sector, the incidence of fine art use is very low (two respondents – see Table 13). One of these deals with indigenous art and it is in this area that the author generally negotiates direct with the artist.

Although newspapers claim not to use fine art regularly, one respondent nonetheless completed this area of the survey. Although fine art may be a minor proportion of the visual material used in newspapers, for the purposes of this survey it is still significant and therefore the consultants include the following single result for information: the in-house editor obtains the right to use all fine art material from a copyright collecting society when appropriate, if not covered by fair dealing; and they comply with the written terms of the supplier and issue their own agreement for limited, specific rights.

This raises the issue of 'reporting the news' – certainly an area open to interpretation and dispute, by both individual artists and photo libraries. *There is a blurring of the line between the right of review and reporting the news*, as one respondent said.

VISCOPY is increasingly important for clearing permissions for the use of fine art material. This is summarised by the following comment from one respondent: *editor obtains what we want ... likely be children's illustrations as they are the only fine art we commission ... for other fine art the editor contacts VISCOPY to get clearance from the author's selection, and author chooses the art they'd like to use and gets permission. When final choice is made publisher pays – we only pay if they are members of VISCOPY, unless they insist – we are trying to get people to join VISCOPY because it makes the administration for the use of fine art so much easier.*

### 1.3.2 Obtaining rights to use fine art in Australian publications

Table 25:  
Obtaining rights to use fine art in Australian publications

	Publishers obtain rights from galleries, libraries, picture libraries	Publishers obtain rights from artists and/or their agents	Publishers clear fine art through collecting societies
Primary school books	45%	55%	0%
Secondary school books	48%	42%	11%
TAFE/tertiary books	37%	42%	22%
Professional/reference	45%	45%	10%
Adult fiction/non-fiction books	38%	50%	13%
Children's	0%	0%	0%
Professional/specialist journals	25%	30%	45%
Trade magazines	50%	0%	50%
Government publications	0%	0%	0%
Advertising	0%	0%	0%
Corporate	0%	0%	0%
Newspapers	0%	0%	0%
<b>TOTAL</b>	<b>40%</b>	<b>38%</b>	<b>22%</b>

While publishers obtain close to equal amounts from galleries/libraries/picture libraries and direct from artists and/or their agents, a significant number (22%) are now clearing the rights through VISCOPY.

It is worth noting that both trade magazine and professional/specialist publishers form a core group using the clearance services offered by VISCOPY. This trend to use the services offered by VISCOPY is summarised by two comments from respondents:

*over 90% of our total use of fine art we clear through galleries, although more and more we use VISCOPY to clear rights – probably now about 20% of all fine art we use and it's growing*

*we sometimes use VISCOPY ... we'd like to always start with them to see if they represent the work we wish to use*

It is also worth reminding the reader that the respondents to all art form sections were only asked to complete the specific art form section if they used that art form 'regularly'. Their decision whether an art form was used 'regularly' was subjective and generally related to quantity of other art forms used. For example, a publisher indicating that 90% of their visual is photographic would, in comparison, indicate that all other forms are used 'irregularly' and therefore did not include them in the survey. This explains why, for example, there is a nil response from primary publishers dealing with VISCOPY. And a nil response from trade magazines dealing direct with artists and their agents.

### 1.3.3 Nature of publishers' agreements with galleries, libraries and other fine art agents

**Table 26:**  
Nature of publishers' agreements with galleries, libraries and other fine art agents

	Publishers comply with gallery terms and conditions	Publishers obtain from gallery written agreement for all rights	Publishers get Written Agreement for limited rights	Publishers get verbal agreement for limited rights
Primary school books	100%	0%	0%	0%
Secondary school books	100%	0%	0%	0%
TAFE/tertiary books	100%	0%	0%	0%
Professional/reference	90%	0%	0%	10%
Adult fiction/non-fiction books	80%	0%	20%	0%
Children's	0%	0%	0%	0%
Professional/specialist journals	100%	0%	0%	0%
Trade magazines	0%	0%	0%	0%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	0%	0%	0%	0%
Newspapers	0%	0%	0%	0%
<b>TOTAL</b>	<b>95%</b>	<b>0%</b>	<b>3%</b>	<b>2%</b>



As demonstrated in Table 26, the majority of respondents (95%) comply with gallery/ picture library terms and conditions, with only 3% negotiating outside the gallery's formal terms to obtain limited (but sometimes extended) rights. The category of adult fiction/non-fiction books includes a major specialist publisher of fine arts books which, because of the nature of their publications, operates with special limited rights agreements. Only 2% of publishers – restricted to the professional/reference category – deal with fine art suppliers on a verbal basis.

### 1.3.4 Nature of publishers' agreements with artists and artists' agents

Table 27:  
Nature of publishers' agreements with artists and artists' agents

	Artist lends publisher transparency no charge, for one off use	Publisher pays fees for limited specific use	Publisher obtains written assignment of copyright	Other
Primary school books	50%	50%	0%	0%
Secondary school books	0%	100%	0%	0%
TAFE/tertiary books	67%	33%	0%	0%
Professional/reference	90%	10%	0%	0%
Adult fiction/non-fiction books	0%	80%	20%	0%
Children's	0%	0%	0%	0%
Professional/specialist journals	30%	70%	0%	0%
Trade magazines	0%	0%	0%	0%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	0%	0%	0%	0%
Newspapers	0%	0%	0%	0%
<b>TOTAL</b>	<b>40%</b>	<b>57%</b>	<b>3%</b>	<b>0%</b>

The majority of publishers using fine art pay fees for limited, specific use (57%). As shown in Table 27, an additional 40% obtain transparencies free of charge from artists.

The 20% of written assignment in the adult fiction/non-fiction sector is only for one off rights. The difference between columns two and three is whether or not the agreement is written.

### 1.3.5 Payment for the acquisition/use of fine art

**Table 28:**  
**Payment for the acquisition/use of fine art**

	Author normally pays related fees	Company normally pays related fees
Primary school books	0%	100%
Secondary school books	50%	50%
TAFE/tertiary books	0%	100%
Professional/reference	0%	100%
Adult fiction/non-fiction books	50%	50%
Children's	0%	0%
Professional/specialist journals	33%	67%
Trade magazines	0%	100%
Government publications	0%	0%
Advertising	0%	0%
Corporate	0%	0%
Newspapers	0%	0%
<b>TOTAL</b>	<b>19%</b>	<b>81%</b>

As shown in Table 28, 81% of respondents pay all commission/permission fees for the use of fine art in Australian publications. This is exclusively so in the primary, TAFE, professional/reference, and trade magazine markets. Only 19% expect authors to pay fees for fine art material – and this is restricted to secondary school, adult trade and professional/specialist journals.

It is interesting to note that although with 67% of professional/specialist journals (see Table 24) the author negotiates with the artist, in 33% of cases in this category does the author then pay. This confirms previous comments that the company will often pay rather than recharge an author.

### 1.3.6 Awareness of the 1998 changes to the Copyright Act regarding fine art

58% of publishers using fine art in their publications are aware of the 1998 changes to the Copyright Act. This basically agrees with the results of tables 8 and 9. Although only 19% of respondents use fine art regularly (see Table 13 overleaf) some elements of this sector are more aware of Copyright issues than the overall survey respondents, in particular respondents in the secondary school, professional/reference markets.

**Table 29:**  
**Awareness of the 1998 changes to the Copyright Act regarding fine art**

	Publishers Aware of Changes to The Act Affecting use of fine art	Publishers unaware of changes to the Act affecting use of fine art
Primary school books	50%	50%
Secondary school books	100%	0%
TAFE/tertiary books	33%	67%
Professional/reference	100%	0%
Adult fiction/non-fiction books	75%	25%
Children's	0%	0%
Professional/specialist journals	50%	50%
Trade magazines	0%	100%
Government publications	0%	0%
Advertising	0%	0%
Corporate	0%	0%
Newspapers	0%	0%
<b>TOTAL</b>	<b>58%</b>	<b>42%</b>

Because fine art is photographed, there may be joint copyright between photographer and artist.

### 1.3.7 Changes to copyright management practice relating to the use of fine art

Table 30 (overleaf) shows that 93% of publishers using fine art regularly in their publications have not changed their copyright management practices following amendments to the Copyright Act in 1998.

Of those who have altered policies (7%), change has been limited to the secondary school sector, with one responding publisher summarising its changes thus: *the CAL payment is now amended to take into account the proportion of fine art in the titles. Where the artist can be identified, payment can be made to the copyright ... we will always pay the copyright owner – copyright is the basis of our business.*

Only 18% of publishers which have not changed their policies since the Act was amended intend to do so in the near future. This is because fine art is not normally 'owned' by publishers, nor is there an intention to attempt to own it.

Table 30:

Changes to copyright management practice relating to the use of fine art

	Publishing policy has changed since Act was amended	Publishing policy has not changed since Act was amended
Primary school books	0%	100%
Secondary school books	50%	50%
TAFE/tertiary books	0%	100%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	0%	0%
Professional/specialist journals	0%	100%
Trade magazines	0%	100%
Government publications	0%	0%
Advertising	0%	0%
Corporate	0%	0%
Newspapers	0%	0%
<b>TOTAL</b>	<b>7%</b>	<b>93%</b>

## 1.4 LINE DRAWINGS/ILLUSTRATIONS

### 1.4.1 Negotiating for the use of line drawings/illustrations used in publications

**Table 31:**  
Negotiating for the use of line drawings/illustrations used in publications

	Publishers art/design department negotiates	Publishers rights/ permission department negotiates	Publishers in house editor negotiates	Freelance editor/ packager negotiates	Author negotiates	Other
Primary school books	54%	1%	20%	6%	6%	13%
Secondary school books	57%	14%	16%	0%	13%	0%
TAFE/tertiary books	20%	36%	24%	0%	20%	0%
Professional/reference	27%	5%	30%	0%	28%	10%
Adult fiction/non-fiction books	50%	0%	36%	0%	9%	5%
Children's	8%	0%	75%	0%	17%	0%
Professional/specialist journals	3%	3%	34%	0%	48%	14%
Trade magazines	100%	0%	0%	0%	0%	0%
Government publications	50%	0%	0%	0%	43%	7%
Advertising	100%	0%	0%	0%	0%	0%
Corporate	80%	20%	0%	0%	0%	0%
Newspapers	0%	50%	50%	0%	0%	0%
<b>TOTAL</b>	<b>46%</b>	<b>11%</b>	<b>24%</b>	<b>0%</b>	<b>15%</b>	<b>4%</b>

As shown in Table 31, the majority of publishers (81%) negotiate directly for the supply of line drawings and/or illustrations to be used in their publications. 15% use their authors to negotiate and 4% use 'other' negotiators, which may include 'illustrator as co-author', or, as in one case of licensed product, a corporate solicitor.

### 1.4.2 Sources of line drawings/illustrations used in publications

Table 32 (overleaf) shows that the majority of publishers (55%) in all sectors other than newspapers, corporate and government, use freelancers to prepare line drawings and illustrations.

Newspapers claim not to use freelancers at all, instead having employed staff producing all line drawings/illustrations. As with photographers, these staff will, in most cases, be governed by the MEAA agreement.

**Table 32:**  
**Sources of line drawings/illustrations used in publications**

	Publishers in house designers prepare material	Freelance illustrators prepare material	Clip art is used	Third party publishers material is used	Other
Primary school books	23%	76%	1%	1%	0%
Secondary school books	26%	64%	3%	0%	7%
TAFE/tertiary books	0%	66%	8%	20%	6%
Professional/reference	8%	56%	0%	9%	27%
Adult fiction/non-fiction books	0%	72%	10%	10%	8%
Children's	0%	83%	0%	0%	17%
Professional/specialist journals	23%	55%	0%	0%	23%
Trade magazines	26%	72%	0%	0%	2%
Government publications	57%	28%	2%	13%	0%
Advertising	0%	80%	20%	0%	0%
Corporate	50%	10%	20%	0%	20%
Newspapers	100%	0%	0%	0%	0%
<b>TOTAL</b>	<b>27%</b>	<b>55%</b>	<b>5%</b>	<b>3%</b>	<b>9%</b>

Only 5% of publishers use clip art regularly, with primary users of this form of artwork being advertising agencies and in-house corporate publishers. Similarly, the use of 'third party publishers material' – such as public sector material and material adapted under licence – is a low 3%.

And from those regularly using 'other' sources:

*we use material from overseas publications we have rights to adapt -- especially for the LOTE market*

*author supplies roughs, but mostly we then have them redrafted by typesetter – does this mean there's a separate typesetter 'artistic' copyright*

*from contributors to the [industry] standard – would account for at least 70% of the line drawings we publish, eg industry association contributes to that industry's standard and supplies material from a number of sources, mainly supplied by committees working on the standard. Certainly the ownership trail is impossible to track. We just assume we have rights to publish*

*author often gives written brief. If the author supplies roughs, the illustration is totally reworked using base text information.*

### 1.4.3 Nature of publishers' agreements with freelancers preparing line drawings/ illustrations

**Table 33:**  
Nature of publishers' agreements with freelancers preparing line drawings/ illustrations

	Publishers obtain written Assignment Covering all rights	Publishers obtain written agreement for limited rights	Publishers obtain verbal agreement for limited rights	Publishers obtain verbal agreement for all rights	Other
Primary school books	59%	4%	25%	13%	0%
Secondary school books	56%	26%	19%	0%	0%
TAFE/tertiary books	95%	5%	0%	0%	0%
Professional/reference	17%	33%	33%	0%	17%
Adult fiction/non-fiction books	10%	50%	20%	10%	10%
Children's	43%	14%	29%	0%	14%
Professional/specialist journals	0%	25%	50%	0%	25%
Trade magazines	22%	11%	44%	11%	11%
Government publications	33%	0%	67%	0%	0%
Advertising	100%	0%	0%	0%	0%
Corporate	0%	0%	100%	0%	0%
Newspapers	0%	100%	0%	0%	0%
<b>TOTAL</b>	<b>36%</b>	<b>22%</b>	<b>32%</b>	<b>3%</b>	<b>7%</b>

Table 33 shows that 58% of publishers have written agreements with creators of line drawings and illustrations. 39% claim to obtain all rights, though 3% of these agreements are verbal. 54% of publishers obtain limited rights for their illustrations.

Only one responding advertising agency (refer Table 13) is using illustration regularly and, because of the nature of those illustrations, they are able to negotiate full rights, probably because the illustrations have no other market.

The TAFE/tertiary book sector claims to negotiate all rights for the majority of their illustrative material. Primary schools appear to put more focus on retaining all rights to photographic material, whereas TAFE/tertiary concentrate on retaining right to illustrative work. It may be that at the TAFE level, line and illustrative material is, by nature of the market, more 'technical' and therefore the artist sees less need to retain rights.

The use of print published material in Australian education departments varies across states. While there is widespread support by education ministers for national curriculum material to be developed, the practice at bureaucratic level seems to result in somewhat different outcomes. Only at primary level -- and even this varies according to the subject matter -- can material be said to be published for use across the country, although even in this market correlation notes generally are needed to ensure the material fits state-based learning goals and curriculum guidelines.

At secondary level, while common learning standards may exist, publishers generally produce material for substantial sales in one state only (allowing that a 'core' text in one state will always have reference value in another). Even at TAFE level where a national curriculum based on accepted training standards has received widespread acceptance, each state seems to have variations with the pattern of book sales directly related to the state in which the author works and writes.

It is likely that the move to electronic learning, where world-wide resources are available to Australian schools, will force a change to the way educational material is developed. As one education official commented to the consultants: *at present there's a lot of lip service paid to the notion of common learning outcomes across the country. Trouble is, back in the states little seems to change. Wiring schools will alter matters dramatically. If we don't want to be swamped by overseas school material, with all that implies to Australian publishing which has developed such a successful niche for itself, state-based education material will have to give way to truly national material. If we don't unite, local education will be swamped. It's as simple as that.*

Table 33 also shows that 35% of publishers clarify rights verbally. Publishers claiming that 'other means are used' offered such explanations as 'ownership implied', 'long standing practice', and 'there's an assumption that we own'.

Although 43% of children's publishers claim to have written assignments covering all rights, the results of the artists' survey (see Table 61 where 19% of illustrators say clients buy all rights) contradict this. Certainly the 'name' illustrators are generally better informed (probably through membership of the ASA's book illustrators' sub group). They tend to retain rights or sign royalty agreements. One of the children's book illustrators who does sign away all rights works in the non-fiction area -- specialising in natural history and animals.

One issue raised by a publisher, and one which may well affect others, concerns 'retro-active editions': *ie, where we reissue previously out of print titles with a fresh look. Illustrators are usually unwilling to change the rights status from one edition to another, so what we think is a standard company copyright management practice, may not be so.*



Another publisher recognises copyright in unique creative work by designers ('the look and feel' of the work): *in our books we acknowledge designers and creative work copyright in a cover, eg [title]. For each country the book is sold in, if they use her cover design, the designer gets a fee. Another [title] is sold, including the look of the book and fee for the designer is included in negotiations with new countries*

A particular problem identified by children's book illustrators is curriculum infringements with artists' work used in teaching aids without permission or fees.

Comments from publishers obtaining written agreements which assign all rights:

*for education titles we get a specific assignment ... enables us to reuse in different version of the same books*

*all licensed product is covered by assignment*

*ownership comes through our Order Pad which has assignment clarification – we may need to re-look at the wording but its pretty obvious that all rights from all orders covered by the order belong to us*

*we get full rights then agree with the illustrator that they have certain reuse rights*

*assignment for smaller illustrations where we pay up front... major illustrative work is covered by royalty sharing*

#### **1.4.4 Payment for acquisition/use of line drawings/illustrations**

Table 34 (overleaf) shows that the majority of publishers (82%) pay for line drawings/illustrations. Authors pay in 18% of cases, especially professional/reference and professional/specialist journals categories (50% and 48% respectively).

Even though publishers say that authors pay in 18% of cases, in reality the publisher will often pay the illustrator on submission of the artwork, recharging the amount to the author's yet-to-be-earned royalty account.

In the book industry, line art and illustrations are often seen as two different art forms, whereas in magazines and newspapers they are treated the same.

Table 34:

Payment for acquisition/use of line drawings/illustrations

	Author normally pays fees for line/ drawings illustrations	Publisher normally pays fees for line/ drawings illustrations
Primary school books	11%	89%
Secondary school books	31%	69%
TAFE/tertiary books	0%	100%
Professional/reference	50%	50%
Adult fiction/non-fiction books	34%	66%
Children's	43%	57%
Professional/specialist journals	48%	53%
Trade magazines	0%	100%
Government publications	0%	100%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	0%	100%
<b>TOTAL</b>	<b>18%</b>	<b>82%</b>

Comments from publishers where authors carry costs of line drawings and illustrations

*the illustrator is a co-author in all our books, always. So in this sense the author pays company would tend to pay for line drawings, author for illustrations. Illustration costs are much higher, so 'author pays' would be closest to our practice*

Comments from publishers generally carrying costs for line drawings and illustrations

*for illustrations we pay for 90% of what's in our primary school material, it's probably 50/50 for secondary, author pays mainly for tertiary books, but there's not much illustrations in tertiary. Line drawings are different ... we consider line drawings to be textual and we carry the costs the company initially, may sometimes be deducted from author, depending on contract always the publisher pays for illustrations used on a covers, internals are paid by us and sometimes recharged to author .... not line art, that's our responsibility*

#### 1.4.5 Awareness of changes to the Copyright Act in regard to line drawings/illustrations

Table 35 (overleaf) shows that only 54% of publishers are aware of the 1998 changes to the Copyright Act.

**Table 35:**

**Awareness of changes to the Copyright Act in regard to line drawings/illustrations**

	Publishers aware of changes regarding line drawings and illustrations	Publishers not aware of changes regarding line drawings and illustrations
Primary school books	63%	38%
Secondary school books	43%	57%
TAFE/tertiary books	40%	60%
Professional/reference	17%	83%
Adult fiction/non-fiction books	50%	50%
Children's	29%	71%
Professional/specialist journals	50%	50%
Trade magazines	38%	62%
Government publications	67%	33%
Advertising	100%	0%
Corporate	50%	50%
Newspapers	100%	0%
<b>TOTAL</b>	<b>54%</b>	<b>46%</b>

insofar as they affect line drawings and illustrations. While the newspaper and advertising sectors claim to be fully aware, awareness drops to 17% in the professional/reference sector. Unawareness is second highest among children's book publishers – themselves among the highest users of these forms of artwork (see Table 13).

Compared to awareness regarding photographs (see Table 22), in every sector other than newspaper, corporate, advertising and government awareness of the changes was substantially lower.

Even where publishers claim to be aware of the changes, the degree of detailed awareness generally was very low. The incidence of 'we were aware, but hadn't really given it too much thought', 'knew something, but not any detail, and 'remember reading something, but have never seen any detailed material circulating' reinforces this belief.

#### **1.4.6 Changes to copyright management practice relating to the use of line drawings/illustrations**

74% of publishers, and a majority in most publishing categories, have not altered their copyright

Table 36:

Changes to copyright management practice relating to the use of line drawings/illustrations

	Publisher policies changed since Act was amended	Publisher policies not changed since Act was amended
Primary school books	13%	88%
Secondary school books	14%	86%
TAFE/tertiary books	20%	80%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	29%	71%
Professional/specialist journals	0%	100%
Trade magazines	33%	67%
Government publications	0%	100%
Advertising	100%	0%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>26%</b>	<b>74%</b>

management practices regarding line drawings/illustrations since the Act was amended in 1998. As shown in Table 36, only newspapers and advertising agencies claim to have significantly changed practices.

64% of those publishers which have not changed policy since the Act was amended, say they will in the near future.

Comments from publishers which have altered their copyright management policy/practices insofar as the use of line drawings/illustrations is concerned:

*we redrafted our illustrator agreements to ensure we retain all rights with licensed products; we clarified rights with other books ... not necessarily getting all rights, but being clear what we do have contracts now written or confirmed in writing, previously some verbal*

Comments from publishers whose policies have changed, or will change in the near future:

*we have to clarify our rights so the revenue flow is clear. We also query that line drawings, at least the type we use, are artistic. Will have to get clarification?*

*we have clarified all contracts so ownership of rights is clear and – we hope –unambiguous*

*we'll have to get everything in writing I suppose – it's a real pain because it's not the way we usually work with our suppliers*

*we are pretty comfortable with our current systems but as a result of this survey we will review everything, especially secondary rights ... maybe we'll spell things out more clearly so there's no question*

*we return all illustrations but have never clarified our rights ... will now work how best to handle it*

*everything very much done on trust, nothing ever discussed. No formal agreements. Probably will have to change. Might wait and see what happens this year when we get our CAL money*

*question whether stuff we use is artistic in the 'creative' sense – most are computer generated with universities. In medical journals we assume they are done by employees but will have to satisfy ourselves*

*this is going to be an administrative nightmare which we have to start working on now – what about imported books we sell – what's the position with them?*

*the whole thing looks like an admin nightmare – without page numbers there is no way we can tell who owns what – and even if we remit to another central source, how will they split with page numbers? Schools and those copying have to be forced to give the page numbers*

## 1.5 GRAPHS/TABLES

### 1.5.1 Negotiating for the use of graphs/tables in publications

Table 37:  
Negotiating for the use of graphs/tables in publications

	Publishers art/design department negotiates	Rights/ permissions department negotiates	In house editor negotiates	Freelance editor/ packager obtains	Author Obtains	Other
Primary school books	71%	1%	14%	0%	14%	0%
Secondary school books	22%	17%	20%	0%	42%	0%
TAFE/tertiary books	14%	39%	13%	0%	34%	0%
Professional/reference	5%	5%	23%	0%	48%	18%
Adult fiction/non-fiction books	50%	0%	0%	0%	25%	25%
Children's	50%	50%	0%	0%	0%	0%
Professional/specialist journals	3%	25%	3%	0%	23%	48%
Trade magazines	78%	0%	0%	0%	0%	22%
Government publications	13%	0%	0%	7%	80%	0%
Advertising	100%	0%	0%	0%	0%	0%
Corporate	95%	0%	0%	0%	0%	5%
Newspapers	25%	50%	25%	0%	0%	0%
<b>TOTAL</b>	<b>44%</b>	<b>16%</b>	<b>8%</b>	<b>0%</b>	<b>26%</b>	<b>6%</b>

Table 37 shows that 68% of publishers use in-house staff to obtain graphs. 26% use authors to obtain graphs/tables, significantly higher than the 15% for line drawings/illustrations (see Table 31).

The issue of artistic merit of graphs/tables raised itself quite often with respondents. Many respondents consider (and treat) graphs/tables as text with full supply responsibility falling to the author, or the publishers where roughs are supplied with typescripts. This was summarised by one major educational publisher: *we treat as text and we typeset as text. Typesetting is based on author-generated roughs in most cases or, say, ABS material for which we may/may not get permission, depending on the changes we intend to make* [refer Table 74 on infringements].

To further complicate matters, the typesetter may sub contract preparation of graphs and tables. If they are artistic the 'rights trail' is obscured.

A senior member of the design community provided a definition to describe when a graph or table is an artistic work: *when it is a technical, general interpretation, it is not artwork. It becomes artwork when there is*

*a refined creative interpretation of the text information. Even though this interpretation may only be in typography, this can still be art..*

Comments relating to the concern about whether graphs/tables are truly 'artistic' included:

*if the material supplied is no good we might get someone to recast – doubt if our sort of stuff is artistic – mainly it's in maths books etc ... it's really just tabulated text*

*often the rough for graphs comes from the author. However the editor would then arrange for it to be prepared in the form required by the book, sometimes with the help of the production department – if the typesetter is preparing, sometimes with rights dept if we need clearance, say from AGPS or ABS*

*typesetter usually sets graphs/tables as part of contract although at a different \$ rate*

*our own cartography department always produces graphs*

*if we use Excel for graphs and tables, does Mr Gates get photocopy money too as the artist?*

## 1.5.2 Sources of graphs/tables used in publications

Table 38:

Sources of graphs/tables used in publications

	Employees Prepare Graphs/ Tables used	Freelancers prepare graphs/ tables used	Third- party publisher material used as is	Other
Primary school books	42%	44%	7%	7%
Secondary school books	23%	35%	0%	42%
TAFE/tertiary books	39%	23%	18%	19%
Professional/reference	53%	13%	12%	22%
Adult fiction/non-fiction books	33%	40%	0%	27%
Children's	100%	0%	0%	0%
Professional/specialist journals	23%	30%	0%	48%
Trade magazines	83%	0%	0%	17%
Government publications	85%	5%	10%	0%
Advertising	100%	0%	0%	0%
Corporate	50%	0%	30%	20%
Newspapers	100%	0%	0%	0%
<b>TOTAL</b>	<b>61%</b>	<b>16%</b>	<b>6%</b>	<b>17%</b>

Table 38 shows that 61% of graphs and tables used in Australian publications are prepared by in house staff. Only 16% are prepared by freelancers. The high level of 'other' sources for graphs/tables, includes a significant incidence of author generated material. 6% of publishers claim to use third-party publishers' material – mainly, it appears, content from the Australian Bureau of Statistics and other government and semi-government departments.

Two comments from different publishers using third-party material are instructive: *we always recast into different format – ABS material is open for anyone to use, not their formatting of course, but surely the content is public, and we consider ABS material to be public information – we reset, no permission, no fee ... always have, anything wrong with that...*

While this may well be the view held by a number of publishers, ABS sees it quite differently. Although they do not charge fees for most material, with permission being given for one-off use for free, it is still required that potential users seek permission to use ABS's copyright material. Every day there are a huge number of infringements of their property, according to the ABS.

### 1.5.3 Nature of publishers' agreements with freelancers preparing graphs/tables

**Table 39:**  
Nature of publishers' agreements with freelancers preparing graphs/tables

	Publishers obtain written assignment for all rights	Publishers get written Agreement for limited Rights	Publishers get verbal agreement for limited rights	Publishers get verbal agreement for all rights	Other
Primary school books	83%	0%	17%	0%	1%
Secondary school books	79%	0%	0%	0%	21%
TAFE/tertiary books	80%	20%	0%	0%	0%
Professional/reference	0%	0%	100%	0%	0%
Adult fiction/non-fiction books	0%	33%	0%	0%	67%
Children's	0%	0%	0%	0%	0%
Professional/specialist journals	0%	0%	33%	33%	33%
Trade magazines	0%	0%	0%	0%	0%
Government publications	100%	0%	0%	0%	0%
Advertising	0%	0%	0%	0%	0%
Corporate	0%	0%	0%	0%	0%
Newspapers	0%	100%	0%	0%	0%
<b>TOTAL</b>	<b>43%</b>	<b>19%</b>	<b>18%</b>	<b>4%</b>	<b>16%</b>



Table 39 shows that 43% of publishers obtain a written assignment of copyright for all graphs/tables used in their publications.

This is highest with an education department (100%), lowest with secondary publishers (79%), though only four sectors claim to get written agreements for all rights.

Overall, 62% of publishers clarify the rights position of graphs/tables in writing. Only 22% clarify verbally. Of the 16% nominating 'other', the position was unclear with rights to use computer generated graphs/tables not often sought. Equally, a significant number of publishers – particularly those considering graphs/tables as no different to text – do not specify graphs/tables separately. In each of these cases, the rights position, certainly as far as publishers is concerned, is quite unclear.

Some comments supporting responses to 1.5.3

*if you consider typesetters as freelancers then, yes, we use freelancers – we order using our Order Pad which assigns all rights to us*

*it's a bit ad hoc with graphs/tables– sometimes we use our standard agreement to get full rights– say where there are a large number of graphs/tables. Where there are a few we just ask freelancers, usually people we have used for years. If they ask the typesetter to prepare graphs and tables we just place the order – often verbally. They work from the author's roughs. Don't know where this leaves us ...*

#### **1.5.4 Payment for the acquisition/use of graphs/tables**

79% of publishers pay all fees relating to the provision of graphs and tables in their publications (see Table 40 overleaf). In many categories the publisher pays exclusively and does not recharge the author, seeing graphs/tables as essentially textual. For the purposes of this survey, 'author' in the advertising sector should be read as client.

Apart from advertising, the highest incidence of author payment for graphs/tables is in the professional/specialist journal sector, which reflects the practice of authors providing articles, often in camera-ready form.

**Table 40:**  
**Payment for the acquisition/use of graphs/tables**

	Company pays all fees for graphs/ tables	Author pays all fees for graphs/ tables
Primary school books	86%	14%
Secondary school books	99%	1%
TAFE/tertiary books	83%	17%
Professional/reference	60%	40%
Adult fiction/non-fiction books	67%	33%
Children's	100%	0%
Professional/specialist journals	53%	48%
Trade magazines	100%	0%
Government publications	100%	0%
Advertising	0%	100%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>79%</b>	<b>21%</b>

Publisher comments relating to 1.5.4:

*company would pay other than in exceptional circumstances where there are considerable changes made by the author after typesetting ... these changes would be considered the same as excessive text changes by the author*

*the company tends to consider graphs and tables as text so would pay , although there a \$ limit in the contract so, in theory at least, if the costs were high we'd recharge the author*

*if part of the typesetting then company pays – if substantial amount needed setting, and the author could have supplied we might get author to pay –*

*depends on the relationship and the contract*

*the author 'pays' in that they generate camera-ready graphs/tables integrated into text ... following the company's style sheet*

## 1.5.5 Awareness of 1998 changes to the Copyright Act in regard to graphs/tables

**Table 41:**  
Awareness of 1998 changes to the Copyright Act in regard to graphs/tables

	Publishers aware of changes affecting graphs/ tables	Publishers unaware of changes affecting graphs/ tables
Primary school books	71%	29%
Secondary school books	50%	50%
TAFE/tertiary books	43%	57%
Professional/reference	17%	83%
Adult fiction/non-fiction books	33%	67%
Children's	0%	100%
Professional/specialist journals	50%	50%
Trade magazines	60%	40%
Government publications	100%	0%
Advertising	50%	50%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>48%</b>	<b>52%</b>

Publishers are almost evenly divided in awareness that last year's s135ZM changes to the Copyright Act affected graphs/tables used in their publications, although, as with other art forms, the depth of awareness cannot be said to be significant. Awareness was highest in the newspaper and government sectors, lowest in the children's and corporate sectors.

The 'artistic' nature of graphs/tables seems to have affected the depth of awareness. A significant number of respondents, for example, responded to this question with comments such as: *was aware, but don't consider stuff we use as artistic so didn't focus on it, knew, but even now I find it hard to accept that the graphs/tables we use are artistic – they are mainly tabulated text. Who decides, because if they are [artistic] then maybe the typesetter owns copyright to them, as they 'make' them.*

## 1.5.6 Changes to copyright management practices relating to the use of graphs/tables

As shown in Table 42, over 96% of publishers have not changed their copyright management policies in relation to graphs/tables since the Act was amended last year. Even where changes have occurred the

incidence is low – only primary, TAFE/tertiary and trade magazine areas, and then only 14%, 17% and 20% respectively.

**Table 42:**  
**Changes to copyright management practices relating to the use of graphs/tables**

	Publisher policies have changed since Act was amended	Publisher policies have not changed since Act was amended
Primary school books	14%	86%
Secondary school books	0%	100%
TAFE/tertiary books	17%	83%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	0%	100%
Professional/specialist journals	0%	100%
Trade magazines	20%	80%
Government publications	0%	100%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	0%	100%
<b>TOTAL</b>	<b>4%</b>	<b>96%</b>

A number of publishers – and as a result of the survey most realise that graphs/tables can be considered 'artistic' – remain unsure about the issue and are looking for guidance on how best to handle this particular art form. Comments such as 'we will watch what happens', 'hope the situation is clarified quickly', and 'never really considered where the copyright chain starts/finishes for graphs/tables', sum a theme echoed by many. In total, 19% of those who have not changed their policies since the Act was amended say they will in the near future, or when matters are clarified.

## 1.6 CARTOONS

### 1.6.1 Negotiating for the use of cartoons in publications

Table 43:  
Negotiating for the use of cartoons in publications

	Publisher art/design department obtains cartoons	Rights/ permissions department obtains cartoons	In house editor obtains cartoons	Freelance editor/ packager obtains cartoons	Author obtains cartoons
Primary school books	53%	7%	40%	0%	0%
Secondary school books	56%	14%	30%	0%	0%
TAFE/tertiary books	0%	60%	40%	0%	0%
Professional/reference	0%	0%	50%	0%	50%
Adult fiction/non-fiction books	0%	0%	50%	0%	50%
Children's	0%	0%	100%	0%	0%
Professional/specialist journals	100%	0%	0%	0%	0%
Trade magazines	100%	0%	0%	0%	0%
Government publications	0%	0%	0%	0%	0%
Advertising	0%	0%	0%	0%	0%
Corporate	100%	0%	0%	0%	0%
Newspapers	0%	75%	25%	0%	0%
<b>TOTAL</b>	<b>41%</b>	<b>16%</b>	<b>33%</b>	<b>0%</b>	<b>10%</b>

Table 43 shows that 90% of publishers use in house staff to obtain cartoons used in publications.

None use freelancers, and in only 10% of cases does the author negotiate for the use of cartoons, and even this is restricted to professional and adult trade sectors.

### 1.6.2 Sources of cartoons used in publications

Table 44 (overleaf) indicates that the majority of cartoons (78%) used in publications are sourced directly from cartoonists or their agents. The entire 12% in 'other' are staff.

**Table 44:**  
Sources of cartoons used in publications

	Publishers source cartoons from newspaper/ magazine libraries	Publishers source cartoons from cartoonist or their agents	Other
Primary school books	3%	97%	0%
Secondary school books	15%	85%	0%
TAFE/tertiary books	33%	23%	45%
Professional/reference	0%	100%	0%
Adult fiction/non-fiction books	50%	50%	0%
Children's	0%	100%	0%
Professional/specialist journals	0%	100%	0%
Trade magazines	0%	100%	0%
Government publications	0%	0%	0%
Advertising	0%	0%	0%
Corporate	0%	100%	0%
Newspapers	0%	25%	75%
<b>TOTAL</b>	<b>10%</b>	<b>78%</b>	<b>12%</b>

Some comments from respondents to this question:

*for previously published cartoons, especially current affairs (Leunig, Nicholson etc) we contact newspapers, but they always refer us straight to the cartoonist for clearance.*

*newspapers send us to the cartoonist because newspapers don't hold reprint rights – this would be about 30% of all cartoons used.*

This latter comment confirms the view of cartoonists spoken to -- that is, that even though they are staff they are left to trade their work as they wish.

### **1.6.3 Nature of publishers' agreements with newspaper and magazine libraries**

Of the 11% of publishers obtaining cartoons from newspaper or magazine libraries (Table 45 overleaf), 96% comply with the terms and conditions of the supplier. None claims to get full assignment of copyright.

**Table 45:**

**Nature of publishers' agreements with newspaper and magazine libraries**

	Publishers comply with newspaper/ magazine library terms	Publishers obtain written Assignment for all rights	Publishers obtain written agreement for limited rights	Publishers obtain verbal agreements for limited rights	Publishers obtain verbal agreement for all rights
Primary school books	100%	0%	0%	0%	0%
Secondary school books	83%	0%	17%	0%	0%
TAFE/tertiary books	100%	0%	0%	0%	0%
Professional/reference	0%	0%	0%	0%	0%
Adult fiction/non-fiction books	100%	0%	0%	0%	0%
Children's	0%	0%	0%	0%	0%
Professional/specialist journals	0%	0%	0%	0%	0%
Trade magazines	0%	0%	0%	0%	0%
Government publications	0%	0%	0%	0%	0%
Advertising	0%	0%	0%	0%	0%
Corporate	0%	0%	0%	0%	0%
Newspapers	0%	0%	0%	0%	0%
<b>TOTAL</b>	<b>96%</b>	<b>0%</b>	<b>4%</b>	<b>0%</b>	<b>0%</b>

**1.6.4 Nature of publishers' agreements with cartoonists and/or their agents**

Table 46 (overleaf) shows that 51% of publishers verbally obtain the rights to cartoons, with 3% saying they obtain all rights verbally.

27%, limited to the education and professional/reference sectors, get written assignment of copyright. However, in a number of cases this may be a non-exclusive agreement.

The 22% of 'other' covers full time and permanently contracted employees. As one respondent offered: *we often get staff designers to prepare little cartoons as fillers and to highlight a section... as employees we would own all rights. In other cases we use illustrators and treat cartoons as line drawings and therefore ask for all rights.*

The special arrangements that newspapers have with cartoonists explains that category's 100% 'other' response: *We (newspapers) have exclusive contracts with cartoonists through MEAA negotiations which give us specific right outside the categories you have offered for answers.*

Table 46:

Nature of publishers' agreements with cartoonists and/or their agents

	Publishers verbally obtain one-off reproduction rights	Publishers verbally obtain all reproduction rights	Publishers commission and get assignment in writing	Other
Primary school books	13%	0%	87%	0%
Secondary school books	0%	0%	80%	20%
TAFE/tertiary books	0%	0%	50%	50%
Professional/reference	50%	0%	50%	0%
Adult fiction/non-fiction books	100%	0%	0%	0%
Children's	67%	33%	0%	0%
Professional/specialist journals	100%	0%	0%	0%
Trade magazines	50%	0%	0%	50%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	100%	0%	0%	0%
Newspapers	0%	0%	0%	100%
<b>TOTAL</b>	<b>48%</b>	<b>3%</b>	<b>27%</b>	<b>22%</b>

### 1.6.5 Payment for acquisition/use of cartoons

Table 47:

Payment for acquisition/use of cartoons

	Company normally pays fees	Author normally pays fees
Primary school books	70%	30%
Secondary school books	78%	23%
TAFE/tertiary books	100%	0%
Professional/reference	100%	0%
Adult fiction/non-fiction books	100%	0%
Children's	67%	33%
Professional/specialist journals	100%	0%
Trade magazines	100%	0%
Government publications	0%	0%
Advertising	0%	0%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>91%</b>	<b>9%</b>



A majority of publishers (91%) pay all fees associated with the use of cartoons. Only primary, secondary and children's publishers regularly expect authors to carry cartoon costs, sometimes as charges against royalties.

### 1.6.6 Awareness of 1998 changes to the Copyright Act in regard to cartoons

**Table 48:**  
Awareness of 1998 changes to the Copyright Act in regard to cartoons

	Publishers aware of the changes	Publishers unaware of the changes
Primary school books	100%	0%
Secondary school books	33%	67%
TAFE/tertiary books	67%	33%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	33%	67%
Professional/specialist journals	0%	100%
Trade magazines	100%	0%
Government publications	0%	0%
Advertising	0%	0%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>53%</b>	<b>47%</b>

Only 53% of publishers are aware of the 1998 changes to the Copyright Act insofar as cartoons are concerned.

### 1.6.7 Changes to copyright management practice relating to the use of cartoons

Table 49 shows that 97% of publishers have not changed their management of cartoon copyright since the Act was amended in 1998. Only primary publishers have changed their practices, and even in this category only a few have changed (3%).

Only 12% of publishers which have not altered their policies since the Act was amended in July 1998 indicated an intention to do so 'in the near future'. However, as the majority of publishers do not own the cartoons they publish, there is no perceived need to change. As one respondent said: *if you are dealing with 'icon' cartoonists, you accept their terms, or don't use their work.*

**Table 49:**  
**Changes to copyright management practice relating to the use of cartoons**

	Publisher policies have changed since Act was amended	Publisher policies Have changed since Act was amended
Primary school books	33%	67%
Secondary school books	0%	100%
TAFE/tertiary books	0%	100%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	0%	100%
Professional/specialist journals	0%	100%
Trade magazines	0%	100%
Government publications	0%	0%
Advertising	0%	0%
Corporate	0%	100%
Newspapers	0%	100%
<b>TOTAL</b>	<b>3%</b>	<b>97%</b>

## 1.7 MAPS/PLANS

### 1.7.1 Negotiating for the use of maps/plans in publications

Table 50:  
Negotiating for the use of maps/plans in publications

	Publisher art/design department obtains maps/ plans	Rights/ permissions department obtains maps/ plans	Publisher in house editor obtains maps/ plans	Freelance editor/ packager obtains maps/ plans	Author obtains maps/ plans	Other
Primary school books	46%	3%	26%	0%	25%	0%
Secondary school books	48%	28%	0%	20%	5%	0%
TAFE/tertiary books	0%	100%	0%	0%	0%	0%
Professional/reference	5%	3%	68%	0%	25%	0%
Adult fiction/non-fiction books	38%	0%	25%	13%	25%	0%
Children's	0%	0%	0%	0%	0%	0%
Professional/specialist journals	0%	0%	20%	0%	80%	0%
Trade magazines	63%	0%	38%	0%	0%	0%
Government publications	20%	0%	0%	0%	80%	0%
Advertising	100%	0%	0%	0%	0%	0%
Corporate	50%	25%	0%	0%	0%	25%
Newspapers	0%	50%	50%	0%	0%	0%
<b>TOTAL</b>	<b>34%</b>	<b>19%</b>	<b>21%</b>	<b>3%</b>	<b>21%</b>	<b>2%</b>

As shown in Table 50, 74% of responding publishers use in-house staff to obtain (commission/negotiate) maps/plans to be used in their publications. 21% of publishers have authors obtain maps/plans, especially in government and professional/specialist journal publications.

### 1.7.2 Sources of maps/plans used in publications

As shown in Table 51 (overleaf), 35% of publishers use in house staff or in house stock for maps and plans. 14% each are obtained from specialist maps libraries, cartographers or their agents and freelance illustrators.

The professional/reference and professional/specialist sectors use architects' plans in the relevant publications, with the same sectors using a large number of handouts. 34% in advertising 'other' is plans provided by the client.

**Table 51:**  
Sources of maps/plans used in publications

	Obtain from in house employees or in house stock	Obtain from specialist map/plan libraries	Obtain from Cartographers and/or Their agents	Commission freelance illustrators to prepare	Use architects plans	Other
Primary school books	31%	13%	38%	18%	0%	0%
Secondary school books	3%	0%	35%	63%	0%	0%
TAFE/tertiary books	0%	63%	13%	13%	0%	13%
Professional/reference	10%	4%	18%	0%	54%	15%
Adult fiction/non-fiction books	0%	38%	51%	11%	0%	0%
Children's	0%	0%	0%	0%	0%	0%
Professional/specialist journals	0%	0%	3%	0%	36%	62%
Trade magazines	50%	0%	0%	50%	0%	0%
Government publications	100%	0%	0%	0%	0%	0%
Advertising	33%	0%	0%	0%	33%	34%
Corporate	60%	40%	0%	0%	0%	0%
Newspapers	100%	0%	0%	0%	0%	0%
<b>TOTAL</b>	<b>35%</b>	<b>14%</b>	<b>14%</b>	<b>14%</b>	<b>11%</b>	<b>11%</b>

Some comments relating to 1.7.2:

*we use stock maps we have built over the years*

*if they are very simple we produce them in-house; if complicated we use freelancers*

*we consider illustrators the same as cartographers for the type of map/plans we use in our books– in fact we probably use illustrators more than cartographers*

*maps and plans are usually handouts*

*not sure where most come from. Mostly they come with the articles ... the author just warrants they have the right to reproduce ... we don't ask many questions*

### 1.7.3 Nature of publishers' agreements with map/plan stock libraries

Unlike other sectors of the visual arts, libraries providing maps and plans are less formal and more open to negotiation (Table 52 overleaf). Only 57% of publishers comply fully with the map libraries terms and conditions. 7% claim to obtain all copyright and can confirm it in writing. Of the 26% in 'other', 75% is a royalty agreement.

**Table 52:**  
**Nature of publishers' agreements with map/plan stock libraries**

	Publisher complies with map library terms	Publisher obtains written assignment to all rights	Publisher obtains limited rights in writing	Other
Primary school books	33%	33%	0%	34%
Secondary school books	0%	0%	0%	0%
TAFE/tertiary books	50%	0%	50%	0%
Professional/reference	100%	0%	0%	0%
Adult fiction/non-fiction books	0%	0%	0%	100%
Children's	0%	0%	0%	0%
Professional/specialist journals	0%	0%	0%	0%
Trade magazines	0%	0%	0%	0%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	100%	0%	0%	0%
Newspapers	0%	0%	0%	0%
<b>TOTAL</b>	<b>57%</b>	<b>7%</b>	<b>10%</b>	<b>26%</b>

Maps supplied for a book are supplied in digital format which can readily be altered making the copyright trail difficult to follow. This has led to some disputes over moral rights.

Some comments made by publishers when responding to 1.7.3:

*we get specific rights -- we obtain map template which the originator retains copyright in. We then add to customise and the rights in the published map is ours – covered by Order Pad*

*in HSC geography material we use them a lot -- we get permission to reproduce maps and sell packs. One-off use for the broad sheet, a specific number, specific cost*

*getting them is the author's responsibility ... we just make sure they are with the text. Sometimes we touch up/redraw in house*

*all maps we use are commissioned and bought outright ... they are added to our in-house file*

#### **1.7.4 Nature of publishers' agreements with cartographers and/or architects**

As shown in Table 53, 65% of publishers using cartographers or architects either obtain one off rights in

writing, receive handouts from architects, have the author deal with the map/plan library, or do not discuss copyright, leaving everything to 'assumption'!

**Table 53:**  
**Nature of publishers' agreements with cartographers and/or architects**

	Publishers verbally commission for one-off repro rights	Publishers verbally commission obtaining all rights	Publishers commission getting assignment of all rights	Other
Primary school books	0%	0%	67%	33%
Secondary school books	0%	0%	96%	4%
TAFE/tertiary books	0%	0%	0%	100%
Professional/reference	0%	0%	25%	75%
Adult fiction/non-fiction books	0%	0%	0%	100%
Children's	0%	0%	0%	0%
Professional/specialist journals	0%	0%	20%	80%
Trade magazines	0%	0%	0%	0%
Government publications	0%	0%	0%	0%
Advertising	0%	0%	0%	0%
Corporate	0%	0%	0%	0%
Newspapers	0%	0%	0%	0%
<b>TOTAL</b>	<b>0%</b>	<b>0%</b>	<b>35%</b>	<b>65%</b>

The exception is the 33% for primary school books where the author has their own agreement with cartographers or architects.

In the secondary sector the commissioning is generally for map templates which the publisher adapts for their own use: *if line art we get an assignment – with maps it is more complicated although we have our own collection based on templates which we bought outright from a major cartographer*

Some publishers seem to avoid the issue of copyright in maps/plans. As one respondent – a well-known publisher with a long history in the trade, said: *nothing discussed for commissioned maps – everything is assumed...*

Some comments from publishers responding to 1.7.4:

*we have to get all rights because we reuse and reuse maps we have in stock*

*we get limited rights to use the base material we buy, but agreement that we have complete ownership of our customised version*

*authors supply roughs and our in house designers set style and prepare them in house. If too complicated we go to freelance illustrators, rarely do we use real cartographers*

### 1.7.5 Payment for acquisition/use of maps/plans

**Table 54:**  
Payment for acquisition/use of maps/plans

	Company normally pays fees	Author normally pays Fees
Primary school books	75%	25%
Secondary school books	100%	0%
TAFE/tertiary books	100%	0%
Professional/reference	50%	50%
Adult fiction/non-fiction books	47%	53%
Children's	0%	0%
Professional/specialist journals	33%	68%
Trade magazines	100%	0%
Government publications	100%	0%
Advertising	0%	100%
Corporate	100%	0%
Newspapers	100%	0%
<b>TOTAL</b>	<b>73%</b>	<b>27%</b>

73% of publishers pay the fees for maps/plans themselves.

100% of the advertising industry use is charged to clients and, in the professional sectors of publishing particularly, the author supplies (and pays if necessary).

### 1.7.6 Awareness of 1998 changes to the Copyright Act in regard to maps/plans

Most publishers (58%) are unaware that amendments to the Copyright Act in July 1998 impacted on maps/plans copied under statutory licence in educational institutions (Table 55 overleaf).

**Table 55:**

**Awareness of 1998 changes to the Copyright Act in regard to maps/plans**

	Publishers Aware of Changes	Publishers unaware of changes
Primary school books	75%	25%
Secondary school books	50%	50%
TAFE/tertiary books	50%	50%
Professional/reference	25%	75%
Adult fiction/non-fiction books	67%	33%
Children's	0%	0%
Professional/specialist journals	0%	100%
Trade magazines	50%	50%
Government publications	50%	50%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	100%	0%
<b>TOTAL</b>	<b>42%</b>	<b>58%</b>

### 1.7.7 Changes to copyright management practices relating to the use of maps/plans

**Table 56:**

**Changes to copyright management practices relating to the use of maps/plans**

	Publishers Have Changed Policies	Publishers have not changed policies
Primary school books	25%	75%
Secondary school books	0%	100%
TAFE/tertiary books	0%	0%
Professional/reference	0%	100%
Adult fiction/non-fiction books	0%	100%
Children's	0%	0%
Professional/specialist journals	0%	100%
Trade magazines	0%	100%
Government publications	0%	0%
Advertising	0%	100%
Corporate	0%	100%
Newspapers	0%	100%
<b>TOTAL</b>	<b>3%</b>	<b>97%</b>



As shown in Table 56, 97% publishers have not altered their copyright management practices insofar as maps/plans used in their publications. Of those, only 22% suggested they might change their policy in the near future.

Comments from publishers responding to 1.7.7:

*haven't changed yet, but will obviously have to clarify so there is consistency across each of our publications*

*only change might be to move away from our 2-stage contract to a single centralised order form which states our policy – that would force others to raise exceptions*

*like every other aspect of this survey, we'll have to clarify the position we are in*

## 2

## SURVEY TWO (ARTISTS) RESULTS

## 2.1 Artists' publishing client base

Table 57:

Artists' publishing client base -- books

	Primary school books	Secondary school books	TAFE/training books	Academic text/reference books	Professional/education books	Children's books	Adult fiction/non-fiction books
Photographers	0%	2%	1%	2%	5%	0%	23%
Photo Libraries	5%	8%	1%	3%	0%	1%	7%
Painters	0%	6%	2%	6%	8%	13%	14%
Illustrators	8%	3%	2%	1%	2%	45%	1%
Cartoonists	0%	1%	0%	0%	1%	1%	6%
Graphs/tables	9%	23%	4%	4%	4%	0%	11%
Maps/Plans	5%	12%	12%	11%	3%	0%	21%
<b>TOTAL</b>	<b>3%</b>	<b>4%</b>	<b>2%</b>	<b>3%</b>	<b>4%</b>	<b>14%</b>	<b>11%</b>

books represent 41% of total publishing client base

Table 58:

Artists' publishing client base - magazines

	Professional reference magazines	General consumer magazines	Specialist consumer magazines	Children's magazines
Photographers	10%	17%	8%	0%
Photo Libraries	8%	16%	4%	1%
Painters	6%	5%	11%	0%
Illustrators	3%	2%	5%	2%
Cartoonists	14%	12%	1%	0%
Graphs/tables	10%	8%	6%	2%
Maps/Plans	2%	5%	10%	0%
<b>TOTAL</b>	<b>8%</b>	<b>10%</b>	<b>6%</b>	<b>1%</b>

magazines represent 25% of total publishing client base

Tables 57, 58 and 59 (overleaf) cover the major publisher client base of artist categories interviewed for the survey.

Seventy surveys were completed, but as these included six photo libraries which together represent between them thousands of photographers, and hundreds of illustrators, Survey 2 covered a substantial

body of artists. It should be noted that the photo libraries are not only using pre existing work. They are, in fact, commissioning new work as well in order to compete.

41% of the work generated for these artists is from the book sector, 25% from magazines, 12% from newspapers, 16% from advertising, 4% corporate and 3% 'other' – print material such as postcards etc.

In spite of the coverage, the survey did not find any photographers working in the primary or children's book market, nor did it find painters or cartoonists working for the primary school sector. Of the ten cartoonists, none works for TAFE/tertiary or academic text/ reference.

**Table 59:**  
**Artists' publishing client base – other**

	Advertising material	Newspapers	Corporate publications	'Other' Publications
Photographers	21%	6%	4%	1%
Photo Libraries	42%	4%	1%	0%
Painters	3%	8%	6%	14%
Illustrators	14%	7%	4%	1%
Cartoonists	10%	46%	4%	4%
Graphs/tables	9%	3%	7%	0%
Maps/Plans	2%	8%	8%	0%
<b>TOTAL</b>	<b>16%</b>	<b>12%</b>	<b>4%</b>	<b>3%</b>

'Other' represent 35% of total publishing client base

The figures for photography and cartoons are also low for secondary school, TAFE/ training, academic text/ reference and professional reference books. It is the book sector of the publishing industry that is most likely to push for written assignment of all rights (refer tables 20 and 46). The photographers and cartoonists surveyed are, in the majority, at the top of their profession. Therefore, they are in a strong negotiating position and therefore thus less inclined to sell their copyright outright. This explains why the results in the education publishing sectors are low for photographers and cartoonists.

In regard to photographers' response for primary schools, it is clear these publishers in this sector do not use 'named' photographers and, anecdotally, use a high proportion of students and 'emerging' photographers.

The results in children's magazine sector – 1% overall – reflects nothing other than the sector being very small in comparison to most other print publishers.

Because photo libraries are such enormous repositories of material, the figures, whilst appearing low in some sectors, in fact represent a significant quantity of work. The 5% of their work overall for primary school books and the 1% for TAFE/training and 3% for academic text/reference demonstrate reasonable coverage.

The 42% of photo library material used in advertising, and 1% in corporate probably does not reflect the true position. The agencies found it hard to differentiate between advertising and corporate and most of them chose to 'lump the lot together'.

The other two significant figures, both of which are perfectly understandable, are 45% of illustrators working with children's books, and the 46% of cartoonists employed by newspapers.

## 2.2 Photographic specialisation

Photographer respondents were asked to nominate areas of specialisation, if any. The following were offered:

<i>advertising</i>	<i>architecture</i>	<i>art photography</i>	<i>Australiana,</i>
<i>beauty</i>	<i>do-it-yourself</i>	<i>education</i>	<i>fashion</i>
<i>food</i>	<i>historic film</i>	<i>landscapes</i>	<i>legal</i>
<i>lifestyle</i>	<i>maritime</i>	<i>medical</i>	<i>personalities</i>
<i>news/current affairs</i>	<i>performance/arts</i>	<i>portraiture</i>	<i>science</i>
<i>sport</i>	<i>still life</i>	<i>travel</i>	

Although this question was aimed at photographers, two illustrators offered their areas of specialisation. As they are both pertinent to the survey brief, we note them as follows: the first trained as a vet and illustrates now for the medical, legal and pharmaceutical markets, the other specialises in animals and natural history.

## 2.3 Artists' copyright policies/practices covering the use of their works in publications

68% of visual artists have a blanket copyright policy, normally they own the work and any sale is for one-use only (Table 60 overleaf).

Photo libraries, graphs/tables, maps/plans all indicate that they operate with a 100% copyright policy.

Obviously this is the 'corporate' end of the artists' survey and, as such, they are more likely to operate as a business.

Table 60:

Artists' copyright policies/practices covering the use of their works in publications

	Artist has blanket copyright policy	Artist does not have blanket policy
Photographers	50%	50%
Photo Libraries	100%	25%
Painters	60%	40%
Illustrators	28%	72%
Cartoonists	40%	60%
Graphs/tables	100%	0%
Maps/Plans	100%	0%
<b>TOTAL</b>	<b>68%</b>	<b>32%</b>

The illustrators, with 28% having a blanket copyright policy, showed the lowest awareness and the lowest concern about copyright generally and changes to the Act specifically. The survey covered some of Australia's greatest and internationally recognised book illustrators. Yet these same people showed little commercial interest in the subject. In many cases their trust in publishers was touching!

## 2.4 Nature of agreements between visual creators and publishers

Table 61:

Nature of agreements between visual creators and publishers

	Artist is full time employee	Clients Commission in writing, Buying all Rights	Clients commission in writing buying limited rights	Clients commission verbally, buying all rights	Clients commission verbally, buying limited rights	Artist assigns in writing all copyright to non-commissioned work	Artist issues own agreement granting limited rights	Artist sells work for one off use only	Other
Photographers	0%	11%	33%	0%	12%	0%	28%	11%	5%
Photo Libraries	0%	0%	0%	0%	0%	0%	97%	3%	0%
Painters	0%	0%	15%	0%	22%	0%	46%	7%	10%
Illustrators	0%	19%	40%	1%	7%	1%	8%	18%	5%
Cartoonists	20%	0%	24%	12%	14%	0%	30%	1%	0%
Graphs/tables	0%	0%	0%	20%	0%	0%	70%	10%	0%
Maps/Plans	0%	0%	11%	0%	0%	0%	71%	18%	0%
<b>TOTAL</b>	<b>3%</b>	<b>4%</b>	<b>18%</b>	<b>5%</b>	<b>7%</b>	<b>0%</b>	<b>50%</b>	<b>10%</b>	<b>3%</b>

50% of artists issue their own agreements. However, this figure is heavily weighted by the 'corporate' end --- photo libraries, graphs/tables, maps/plans. Very few illustrators issue their own agreement, and photographers and cartoonists are also disinclined to engage in a 'paper war'. The 46% of painters who claim to issue their own agreements incorporate many artists who in fact use VISCOPY to issue those agreements.

As mentioned in regard to Table 60, it is the illustrators who are most inclined to sell all rights (19%), with a further 40% receiving limited rights agreements from publishers. The suppliers of graphs/tables and maps/plans operate in a similar manner to the photo libraries, hence the high percentages for issuing 'own agreement'.

Surprisingly though, there is still one major supplier of maps/plans in Australia operating in a completely informal manner (20% client commissions verbally, buying all rights). This particular company recently agreed to a deal with an international company for a sizable number of maps without a written agreement.

The 10% figure showing in 'other' for painters covers monographs.

Some comments from respondents to 2.4:

*I sell limited rights only, especially maps for [large publisher] where I get a royalty*

*limited rights: publisher gets one-off use only and pays royalty in lieu of fee*

*one-time use only: three months exclusivity then image returned to photographer*

*rights limited for the print run of that book only, also limited to a specific time period*

*limited for children's books where the publisher has a license to deal with the image for specific time and the artist retains copyright*

*I take shots for a gallery – I give rights for gallery use only, not the artist, architect etc*

*copyright is returned to me returned after a limited embargo period*

*limited to first publication as specified in the contract – X number of billboards, newspaper ads etc*

*limited for a particular book and promotional material associated with it*

*blanket licence for one year only, which can then be renegotiated*

*I am employed by a newspaper ... copyright in cartoons is shared ... drawings are returned but I cannot sell them to the newspaper's competitors. The newspaper sells copies through its library ...*

*I give specific rights: publisher can produce work as a poster or card only ... I retain all other rights as author/artist I retain copyright in the entire text and photographs ... the publisher has limited publishing rights*

*I'm a newspaper employee, I retain secondary rights and re-use rights, not internet rights*

*my work is used for art posters ... a time limit is imposed and use is specified.*

*I'm an employee ... not sure of the details but [employer] has all rights*

*I make verbal agreements; my invoice restates the rights position*

*I agree over the phone and then my invoice makes it clear that I own the rights ... some publishers object because they say they didn't know ... I need to be more upfront about it. Mostly it's not a problem.*

*I issue my own contract ... may cover rights for a specific time only, eg a horoscope visual to be used for a year. Never encompasses secondary rights, may include electronic rights*

*my own agreements ... limits use by size and territory. Never encompasses secondary rights*

*I verbally assign all copyright to non-commissioned work*

*I'm employed as a staff member without rights discussion. Although the newspaper may technically own the rights, the artist is left to use/sell as he wishes after the paper has published*

*my work appears regularly without fees. When [major art publisher] publishes a monograph they do so with permission but no fees are paid.*

## **2.5 Negotiations with visual creators for the use of their work in publications**

Table 62 (overleaf) shows that 81% of artists deal directly with the staff of publishing companies while only 11% deal with authors direct. 22% in 'other' for painters is misleading in that it includes artists who insist that they negotiate with their agents, rather than with publishers and/or authors. This, of course, is the absolute truth of the matter, but does distort the picture.

Interestingly, only 1% of illustrators say they negotiate with authors direct.

Table 62:

Negotiations with visual creators for the use of their work in publications

	Artist negotiates with publishers art/design department	Artist negotiates with publishers' rights/permissions department	Artist Negotiate With Publishers Editor	Artist negotiates with authors direct	Other
Photographers	52%	10%	30%	3%	6%
Photo Libraries	46%	21%	21%	7%	7%
Painters	7%	4%	48%	20%	22%
Illustrators	29%	16%	44%	1%	11%
Cartoonists	20%	5%	66%	3%	5%
Graphs/tables	17%	0%	67%	17%	0%
Maps/Plans	8%	17%	42%	25%	8%
<b>TOTAL</b>	<b>26%</b>	<b>10%</b>	<b>45%</b>	<b>11%</b>	<b>8%</b>

## 2.6 Use of agents in dealings with publishers

Table 63:

Use of agents in dealings with publishers

	Artists do all negotiations themselves	Agents act on artists' behalf	Other
Photographers	54%	46%	0%
Photo Libraries	100%	0%	0%
Painters	55%	26%	20%
Illustrators	74%	26%	0%
Cartoonists	93%	7%	0%
Graphs/tables	100%	0%	0%
Maps/Plans	100%	0%	0%
<b>TOTAL</b>	<b>82%</b>	<b>15%</b>	<b>3%</b>

82% of artists negotiate on their own behalf, with only 15% using an agent.

The 3% in 'other' reflects painters mainly using VISCOPY. Some artists use agents for particular segments of their market only, for example when negotiating with the advertising industry.



## 2.7 Agency' satisfaction that staff comply with copyright policies/practice

Table 64:  
Agency' satisfaction that staff comply with copyright policies/practice

	Agents satisfied that staff comply	Agents not satisfied that Staff comply
Photographers	100%	0%
Photo Libraries	100%	0%
Painters	0%	0%
Illustrators	0%	0%
Cartoonists	0%	0%
Graphs/tables	100%	0%
Maps/Plans	100%	0%
<b>TOTAL</b>	<b>100%</b>	<b>0%</b>

All agents believe their staff comply with their copyright policies.

## 2.8 Awareness by freelancers of artists' copyright policies/practices

Table 65:  
Awareness by freelancers of artists' copyright policies/practices

	Freelancers informed of is high	Awareness by Freelancers is not high
Photographers	100%	0%
Photo Libraries	100%	0%
Painters	0%	0%
Illustrators	100%	0%
Cartoonists	0%	0%
Graphs/tables	100%	0%
Maps/Plans	33%	67%
<b>TOTAL</b>	<b>87%</b>	<b>13%</b>

For other than maps/plans, 100% of artists believe that freelancers are aware of their copyright policies, although it must be noted that the number of responses to this question was very small as many artists do

not deal with freelancers. Two-thirds of the respondents from the maps/plan sectors say that awareness of their freelancers is not high.

## 2.9 Freelancers' compliance of artists' copyright policies/practices

**Table 66:**  
Freelancers compliance of artists' copyright policies/practices

	Freelancers considered to always comply	Freelancers considered to mostly comply
Photographers	29%	71%
Photo Libraries	75%	25%
Painters	100%	0%
Illustrators	0%	100%
Cartoonists	0%	0%
Graphs/tables	100%	0%
Maps/Plans	33%	67%
<b>TOTAL</b>	<b>56%</b>	<b>44%</b>

On the confidence scale, artists appear to trust freelancers with their material. There was a nil response to a 'rarely comply' section.

## 2.10 Methods by which staff and freelancers are advised of copyright policies/practices

**Table 67:**  
Methods by which staff and freelancers are advised of copyright policies/practices

	Staff are advised formally	Staff are advised informally
Photographers	60%	40%
Photo Libraries	67%	33%
Painters	0%	100%
Illustrators	17%	83%
Cartoonists	0%	0%
Graphs/tables	33%	67%
Maps/Plans	35%	65%
<b>TOTAL</b>	<b>35%</b>	<b>65%</b>

As indicated in Table 67, the majority of artists prefer informal relationships with their staff. Although it appears that photographers are more business like, in that 60% advised staff formally, only 25% of photographers have a business complex enough to necessitate employing staff.

The photo libraries, as expected, are the most efficient: *it is incorporated in our three-month training program which all employees go through on commencement of employment..*

## 2.11 Awareness by artists of changes regarding ownership of photographs

**Table 68:**  
Awareness by artists of changes regarding ownership of photographs

	Artists are aware of changes regarding ownership of copyright	Artists are not aware of changes regarding ownership of copyright
Photographers	90%	10%
Photo Libraries	100%	0%
Painters	30%	70%
Illustrators	22%	78%
Cartoonists	40%	60%
Graphs/tables	33%	67%
Maps/Plans	100%	0%
<b>TOTAL</b>	<b>59%</b>	<b>41%</b>

59% of respondents are aware of the changes regarding ownership of photographs, however, this heavily weighted by photographers and photo libraries, as would be expected given they are the groups most affected.

## 2.12 Awareness by artists of changes regarding statutory licence copying of artistic work

The awareness of changes to the Act drops substantially when it comes to the statutory copying payment scheme (Table 69 overleaf). Only 32% are aware of the relevant changes, and many were not aware that the education sector pays copying fees at all. Although the consultants know that some artists have had involvement with the subject of secondary rights before, when asked this question they still answered no!

Table 69:

Awareness by artists of changes regarding statutory licence copying of artistic work

	Artists Aware of Changes Regarding Inclusion of All artistic Work under Statutory copying Payment scheme	Artists not aware of changes regarding inclusion of all artistic work under statutory copying payment scheme
Photographers	25%	75%
Photo Libraries	33%	67%
Painters	30%	70%
Illustrators	28%	72%
Cartoonists	40%	60%
Graphs/tables	0%	100%
Maps/Plans	67%	33%
<b>TOTAL</b>	<b>32%</b>	<b>68%</b>

## 2.13 Changes to artists' copyright management practice since the Copyright Act was amended

Table 70:

Changes to artists' copyright management practice since the Copyright Act was amended

	Artists have Changed Copyright Policies/ Practices	Artists have not changed copyright policies/ practices
Photographers	70%	30%
Photo Libraries	50%	50%
Painters	10%	90%
Illustrators	11%	83%
Cartoonists	20%	80%
Graphs/tables	33%	67%
Maps/Plans	67%	33%
<b>TOTAL</b>	<b>38%</b>	<b>62%</b>

Only 38% of artists have changed their copyright practices since the Act was amended in July 1998. As can be expected, the highest level of change was by photographers. The 67% of change by companies supplying maps and plans coincided with organisational changes necessitating a formal review of their intellectual assets.

Only 23% indicated that they 'may change' their practices in the near future.

Some comments flowing from this question:

*I am now more assertive*

*with the law on my side, I'm in a stronger position to negotiate*

*I now own the work I shoot and I've established a library*

*clients now consult on storage and re-use of images*

*major advertising contract is now being renegotiated to have photographer retain rights*

And from those which may change:

*will make more use of the ASA contract. Will get a written contract before starting work*

*will join CAL/VISCOPY and try to use their services*

*will push for clear credits*

*will demand return of originals and additional fees for re-use*

*knowing that copyright laws are stronger, I will be more confident making my argument with publishers*

## **2.14 Significant changes to artists' copyright management practices over past five years**

As copyright and the broader issue of intellectual property has become more of an issue within publishing, individual artists and suppliers of artistic work progressively are looking at their practices and changing as appropriate (Table 71 overleaf). With some high profile prosecutions for infringement, and increased publicity about copyright matters, these results reflect better awareness of the importance of copyright protection.

**Table 71:**

**Significant changes to artists' copyright management practices over past five years**

	Artists aware of changes to their copyright policies over last 5 years	Artists unaware of changes to Their Copyright policies over last 5 years
Photographers	40%	60%
Photo Libraries	83%	17%
Painters	40%	60%
Illustrators	33%	67%
Cartoonists	40%	60%
Graphs/tables	67%	33%
Maps/Plans	67%	33%
<b>TOTAL</b>	<b>53%</b>	<b>47%</b>

Some comments by respondents to this question:

*three years ago, did extensive work with the Attorney-General's department to protect intellectual property*

*stronger implementation of the policy nowadays*

*change of ownership of material and copyright happened five years ago*

*since changes to the Copyright Act, transparencies are returned*

*advent of VISCOPY has made a difference – prior to VISCOPY artists weren't protected like they are in Europe*

*clients are now more aware of the law on the subject*

## **2.15 Payment of artists' fees**

Table 72 (overleaf) shows that those indicating 'other' when responding to 2.15 mentioned architects and artists, design companies, advertising agencies, music producers, 'their representatives'. As the survey of publishers indicated, in the vast majority of cases the publisher pays the artist.

**Table 72:**  
**Payment of artists' fees**

	Publisher always pays artist fees	Author always pays artist fees	Other
Photographers	86%	1%	14%
Photo Libraries	94%	6%	0%
Painters	89%	11%	0%
Illustrators	85%	4%	11%
Cartoonists	99%	1%	1%
Graphs/tables	100%	0%	0%
Maps/Plans	57%	43%	0%
<b>TOTAL</b>	<b>87%</b>	<b>9%</b>	<b>4%</b>

## 2.16 Awareness of secondary rights in review/promotional material

**Table 73:**  
**Awareness of secondary rights in review/promotional material**

	Artist aware they retain secondary rights to review material	Artist unaware they retain secondary rights to review material
Photographers	55%	45%
Photo Libraries	100%	0%
Painters	67%	33%
Illustrators	44%	56%
Cartoonists	60%	40%
Graphs/tables	100%	0%
Maps/Plans	67%	33%
<b>TOTAL</b>	<b>70%</b>	<b>30%</b>

70% of artists understand that any income due from reproduction is theirs.

As shown elsewhere, it is the illustrators who are the least informed on these matters.

## 2.17 Awareness by artists of infringements to their copyright in the print media

**Table 74:**  
**Awareness by artists of infringements to their copyright in the print media**

	Artists aware of infringements	Artists unaware of infringements
Photographers	75%	25%
Photo Libraries	100%	0%
Painters	60%	40%
Illustrators	39%	56%
Cartoonists	50%	50%
Graphs/tables	100%	0%
Maps/Plans	100%	0%
<b>TOTAL</b>	<b>75%</b>	<b>25%</b>

A significant 75% of responding artists are aware of recent infringements to their work. Infringements occur across all art forms.

Disturbingly, it is the education sector that appears to be the most guilty of infringing artists' copyright, even though NSW TAFE, as one example, has very clear guidelines covering copyright clearance in their 'Publication Guidelines & Procedures' document which is widely available.

As the comments below indicate, this is a serious problem for artists, often impacting on their income. When challenged, many schools plead lack of financial resources as an excuse for unauthorised copying, an interesting paradox when the survey respondents in the education sector confirmed their intent to expand their publishing activities into the commercial publishing arena.

The nature and range of infringements is best described through some examples offered in response to this question. Readers should note that many of these infringements have been pursued legally with the artist obtaining payment and, in some case, a printed apology.

Books –

*curriculum-based infringements are common – children's teaching aids use artist's work all the time. This is a very big problem for quite a few artists - particularly children's book illustrators*

*secondary school system reproduces my paintings often without permission or acknowledgement*

*I illustrated a book. Excerpts from the book were used in a basic reading skills test and reproduced in schools without payment or permission*



*school libraries scan books, load onto CDs then let children write their own stories around my artwork. I lose so many sales through this and there seems to be no understanding that the schools are abusing my rights*

*I supply maps for specific books then find them modified and used in other books*

*I illustrated a children's book that won 'Book of the Year'. The book was subsequently published in Japan with [my] illustrations redrawn by a Japanese artist. I was heartbroken*

*did artwork for a book then found the book was unsold and the cover reused in other books without authority*

*real problem is schools, which are really strapped for cash and cannot afford to buy all the books they would like, so they copy and reuse all the time. I never know whether to be pleased or annoyed ... usually I do nothing about it ... what annoys me is that no one seems to understand that I make my living from illustrating children's books*

*... [book publisher]' scanned photos from catalogue and used in books without authority*

*secondary education system reproduces paintings often without permission or acknowledgement in syllabuses drafted by the Visual Arts Board.*

Magazines/newspapers –

*an airline magazine published one of my maps without permission*

*there is a blurring of the line between the right of review and reporting the news. Tear outs of magazines incorporating my images are regularly used*

*educational publishers re-use images without permission. Newspapers scan images from books – mainly for review, but quite often in other parts of the paper*

*infringements! thousands of them! Every day the ABS's material appears without permission*

*ACP vs Grant Mathews.*

*[new magazine] scanned my images directly from other magazines*

*editorial shots I do for Australian magazines are sold internationally without permission or fees*

*the [newspaper] used a shot without permission. They used to do it regularly, it seems to have stopped*

*dozens, eg [newspaper] used image licensed for half-page inside use as cover of magazine and in advertising*

*[newspaper] used an image from one of my books alongside a derogatory article about Toney Kngwarraye*

Other –

*portrait taken as a private commission for a performer is now being used as the main image in a massive national advertising campaign for a musical*

*portrait shot for a major monthly magazine appeared in a competitor's without credit or payment*

*I shoot material for architects then find the architect has endorsed the building project as part of a print advertising campaign ... my photograph is used as the basis of the campaign without reference, certainly without permission or fee*

*[music company] used poster image as CD cover without permission and without credit*

*used to happen all the time, especially my Melbourne city shots ... they would turn up in government tourist brochures, major and local newspapers etc. Things seems to be getting much better now that photographers have the law behind them. It's not a deliberate rip off mostly – people don't seem to understand the law, or don't want to understand it*

*supplied coffee photographs to specific brief with written agreement for specific use. Subsequently found the images became basis for whole advertising campaign. I got extra money, but it made me wonder about the value of a written agreement. Have to keep watching ... an education program for 'normal everyday businesses' is needed*

*[political lobby group] scanned in and reprinted my cartoons from [newspaper] without permission. Newspaper's lawyers demanded and got fees (for artist), retraction in print and apology*

*a client on sold one of my images to a third party even though we had one-use only contract*

*non-profit groups reuse my cartoons all the time as if they are not subject to copyright. They are always apologetic when I raise it ... I don't do anything because half the time I agree with the cause ... it's a matter of lack of education, rather than an intention to rip off ... seems to be a view that if it is in a newspaper it is public domain*

### 3 APPENDICES

#### APPENDIX 1: RELEVANT SECTION OF THE COPYRIGHT ACT 1968 -- AS AMENDED JULY 1998

##### Educational and other institutions Part VB Works by educational institutions Division 2 Section 135ZM

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##### 135ZM Application of Division to certain illustrations

- (1) Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as, if:
- (a) where any of those sections provides that the copyright in the article or other work is not infringed – the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;
  - (b) a reference to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;
  - (c) a reference to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;
  - (d) a reference to a copy of a page of a literary or dramatic work in an edition of the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work; and
  - (e) a reference to a copy of pages of a literary or dramatic work in an edition of the work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.
- (2) If:
- (a) any remuneration is paid under this Part in respect of a page of a document that is:
    - (i) a copy of the whole or a part of an article (other than a part that is an artistic work) contained in a periodical publication; or
    - (ii) a copy of the whole or a part of a literary or dramatic work contained in a published anthology of works; or
    - (iii) a copy of the whole or a part of a literary, dramatic or musical work other than an article contained in periodical publication; and
  - (b) the making of the page is not an infringement of the copyright in the article or work because of 135ZJ, 135ZK or 135ZL; and
  - (c) the page includes an artistic work or artistic works provided for the purpose of explaining or illustrating the article or work;

The following paragraphs apply

- (d) one half of the remuneration paid in respect of the making of the page is to be paid to the owner, or divided equally among the owners, of the copyright in the literary, dramatic or musical work or works which, or a part of which, appear on the page; and
- (e) one-half of that remuneration is to be paid to the owner, or divided equally among the owners, of the copyright in the artistic work or artistic works which, or a part of which, appear on the page.

.....

## APPENDIX 2: PUBLISHER SURVEY

### PUBLISHERS QUESTIONNAIRE

Name of publisher/publication

Code

Address:

Telephone:

Fax

Email:

Titles/categories published by your company:

No of editorial staff employed by your company

Interviewee

Position

Date of interview

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### BACKGROUND

The aim of this project is to identify current practice, patterns of ownership and contractual arrangements for the use of artistic works in Australian publications.

The study is surveying a representative sample of Australian publishers and in an attempt to reconcile the understanding of the ownership of rights from each perspective.

The results of the project will assist the statutory collecting societies, CAL and VISCOPY, to implement the changes to the distribution of fees for pages copied under statutory licence that include both literary works and artistic works. All responses are confidential and will be aggregated.

### CHANGES TO THE COPYRIGHT ACT

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In July 1998 the government amended the Copyright Act. The changes mean that from 1 July 1988:

- ◆ Visual artists are now entitled to reproduction fees for work photocopied by the education sector. The changes to the law now provide that any money paid for photocopying a page of text that includes artwork (photographs, fine art, drawings/illustrations, cartoons, charts, maps/plans etc) 'provided for the purpose of explaining or illustrating the text' is to be paid 50% to the owners of copyright in the text and 50% to the owners of copyright in the artwork.
  - ◆ For photographs taken after 30 July 1998, the first owner of copyright is now the photographer, unless the photograph is taken for a 'private or domestic' purpose, the client is not resident in Australia, or the photographer have agreed otherwise.
- 

Relevant information regarding copyright in this regard includes:

- ◆ The relevant owner of the copyright is the owner of the reproduction right.
- ◆ Generally the person who creates the work will be the owner of the copyright in the work, subject to exceptions in the Act and any agreement which may provide otherwise.
- ◆ An exception which may be relevant is that the owner of the copyright in a work created by an employee in the normal course of employment will be the employer.
- ◆ Prior to July 1998 the owner of copyright in commissioned photographs was the person who commissioned the work. The July 1998 changes mean that a photographer will now retain copyright in a commissioned photograph *unless it is taken for a private or domestic purpose or unless there is an oral or written agreement to the contrary*. A photographer may also assign their copyright in writing.
- ◆ Photographs taken prior to 1949 are no longer in copyright.
- ◆ Section 35(4) splitting ownership of copyright in newspaper articles may be relevant.
- ◆ A non-exclusive licence is not sufficient to claim copyright ownership.
- ◆ An exclusive licence may be equivalent to copyright ownership depending on the contractual arrangements. An exclusive licence must be in writing.

For the purposes of this study the definition of 'works' would include fine artworks (such as paintings, lithographs, and screenprints), line drawings, graphs/tables, cartoons, photographs, maps and plans. A requirement for copyright protection is that the work be original. Mathematical symbols and tables may not fall in the above definitions and may lack sufficient originality.

### Primary and secondary rights

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For this survey's purpose the following may also be useful:

- ◆ *Primary rights* control uses from the primary material, for example the digital file, transparency, artwork or print.
  - ◆ *'Secondary rights'* cover instances when an initial reproduction is copied, for example from print media using a photocopier.
  - ◆ *Reuse and secondary use*. Primary rights are used to negotiate both these uses (eg, an image used in an annual report may be reused in a brochure). If either document is photocopied, secondary rights cover the photocopying.
- 

...

## SECTION 1

Pub Code:.....

- 1.1 Does your company have a blanket policy covering the use of all artistic works used in its publications? €Yes€No
- 1.2 Which of the following best describes your company's copyright management practices regarding artistic works?  
(If more than one, please estimate % for each)  
 €You obtain written agreements from copyright owners which assign all rights (both primary and secondary),  
*or*  
 €You obtain written agreements from copyright owners which grant your company limited rights, *or*  
 €You make verbal agreements with the copyright owners which grant you all rights, *or*  
 €You make verbal agreements with copyright owners which grant you limited rights, *or*  
 €Other (please explain) .....
- 1.3 Can you verify your verbal agreements? €Yes€No  
 If YES, how? .....
- 1.4 Do all staff comply with your company's copyright management policy and practices? €Yes€No  
 If NO, what are the exceptions?  
 .....
- 1.5 Are freelancers (editors and/or packagers) informed of your copyright policy? €Yes€No  
 If YES, do they comply with them? €Always €Mostly €Rarely  
 If 'rarely' why do you think this is the case?  
 .....
- 1.6 How do you inform staff (and freelancers) of your company's copyright management policy and practices?  
 .....
- 1.7 Does your company have formal training sessions to explain its copyright management policy and practices  
 and/ or any changes to the Copyright Act? €Yes€No  
 If NO, how does it train/advise staff?  
 .....
- 1.8 Were you aware of the changes made to the Copyright Act last year in regard to  
 ownership of photographs? €Yes€No  
 payment for the use of artistic works? €Yes€No
- 1.9 Have any of your company's copyright policies or practices changed since the Copyright Act  
 was amended in July 1998? €Yes€No  
 If YES, in which ways have they changed?.....  
 If NO, are they likely to change in the near future? €Yes€No  
 If YES, how do you think they will change?.....
- 1.10 Are you aware of any significant changes to your company's copyright management  
 policy or practices in the last twenty years? €Yes€No  
 If YES, what were the changes?.....
- 1.11 Turning now to specific types of artistic work, which of the following do you use in your publications?  
 Given your overall use of artistic work, how often is each category used?
- |                                                     | <u>Used regularly</u> | <u>Used irregularly</u> |
|-----------------------------------------------------|-----------------------|-------------------------|
| €Photographs                                        | €(complete 2.1)       | €                       |
| €Artworks (fine art)                                | €(complete 2.2)       | €                       |
| €Line drawings/illustrations                        | €(complete 2.3)       | €                       |
| €Graphs/tables                                      | €(complete 2.4)       | €                       |
| €Cartoons                                           | €(complete 2.5)       | €                       |
| €Maps/plans                                         | €(complete 2.6)       | €                       |
| €Other artistic works used regularly (please list): |                       |                         |
- 1.12 Who normally is responsible for fees relating to the use of artistic works in your company's publications?  
 €Company €Author/journalist €Other: .....
- 1.13 Do you syndicate any of the content from your publications? €Yes€No  
 If YES, what is your policy for the distribution of income earned from syndication?
- 1.14 Are you currently, or will you in the near future, be publishing on the Web? €Yes€No

**SECTION 2**

**2.1 PHOTOGRAPHS**

You mention that you use photographs regularly. Focusing on this category:

2.1.1 Who normally obtains (commissions/buys/negotiates) photographic work used in your company's publications?  
(If more than one, please weight each as % of total used)

- € Art/design department, *or*
- € Specialist rights/permissions officer employed by the company, *or*
- € In-house editor of the particular publication requiring photographs, *or*
- € The freelance editor/packager from whom you are buying services/books, *or*
- € The author of the publication requiring the use of photographs, *or*
- € Other (please indicate): .....

2.1.2 Where do you usually source your photographs? What proportion of the total use of photographs comes from each source?

€	From photo libraries (complete 2.1.2.1)	.....%
€	By commissioning freelance photographers (complete 2.1.2.2)	.....%
€	From a photographer's own collection	.....%
€	By using staff in their capacity as employees	.....%
€	By using the author's own photographs	.....%
€	From in-house photo stock	.....%
€	From handouts and other random sources *	.....%
€	Other (please indicate): .....	.....%

2.1.2.1 Which of the following best describes your agreements with the majority of photo libraries you use?

- € You comply with the written terms/conditions of the photo library?
- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of photographs used in your publications, *or*
- € You obtain written agreements which grant your company limited, specific rights to the use of photographs used in your publications, *or*
- € You have verbal agreements which grant you limited rights, *or*
- € Other: .....

2.1.2.2 Which of the following best describes your agreements with the majority of freelance photographers you use?

- € You verbally commission obtaining one-off reproduction rights to their photographs, *or*
- € You verbally commission obtaining both primary and secondary rights to their photographs, *or*
- € You obtain in writing from the photographer an assignment of copyright for commissioned photograph(s) , *or*
- € Other: .....

2.1.3 Who normally pays any fees relating to the acquisition/use of photographs used in your company's publications?  
.....

2.1.4 In regard to photographs, were you aware of the changes made to the Copyright Act last year? € Yes € No

2.1.5 Have any of the above policy/procedures relating to the use of photographs changed since the Copyright Act was amended? € Yes € No

If YES, in which ways have they changed?.....

If NO, are they likely to change in the near future? € Yes € No

If YES, in which ways might they change?  
.....

Comments:.....

.....

.....

.....

**2.2 ARTWORKS (FINE ART)**

You mention that you use fine art reproductions regularly. Focusing on this category:

2.2.1 Who normally obtains (commissions/buys/negotiates) the fine art material used in your company's publications?

- € Art/design department, *or*
- € Specialist rights/permissions officer employed by the company, *or*
- € In-house editor of the particular publication requiring photographs, *or*
- € The freelance editor/packager from whom you are buying services/books, *or*
- € The author of the publication requiring the use of fine art materials, *or*
- € Other (please indicate): .....

2.2.2 Where do you usually obtain the right to use fine art material? (If more than one, please weight)

- € From galleries, libraries or picture libraries (complete 2.2.2.1)
- € Direct from artists or their agents (complete 2.2.2.2)
- € From a copyright collecting society
- € Other (please indicate): .....

2.2.2.1 Which of the following best describes your agreements with the majority of galleries, libraries or picture libraries you use?

- € You comply with the written terms/conditions of the supplier?
- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of the fine art material used in your publications, *or*
- € You obtain written agreements which grant your company limited, specific rights to the use of the fine art material used in your publications, *or*
- € You have verbal agreements which grant you limited rights to use specific fine art materials in your publications, *or*
- € Other: .....

2.2.2.2 Which of the following best describes you agreements with the majority of artists/artists' agent with which you deal?

- € The artist lends for no charge a transparency for one-off use, *or*
- € You pay a reproduction fee for one-off/limited use, *or*
- € You commission and obtain an assignment of copyright in writing from the artist/agent, *or*
- € Other: .....

2.2.3 Who normally pays any permission/commission fees relating to the use of fine art material used in your company's publications? .....

2.2.4 In regard to fine art, were you aware of the change made to the Copyright Act last year? € Yes € No

2.2.5 Have any of your policies or procedures relating to the use of fine art materials changed since the Copyright Act was amended? € Yes € No  
If YES, in which ways have they changed:.....  
.....

If NO, are they likely to change in the near future? € Yes € No  
If YES, in which ways might they change?  
.....

Comments:.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**2.3 LINE DRAWINGS/ILLUSTRATIONS**

You mention that you use line drawings/illustrations regularly. Focusing on this category:

2.3.1 Who normally obtains (commissions/buys/negotiates) for the line drawings/illustrations used in your company's publications?

- € Art/design department, *or*
- € Specialist rights/permissions officer employed by the company? *or*
- € In-house editor of the particular publication requiring line drawings/illustrations, *or*
- € The freelance editor/packager from whom you are buying services/books? *or*
- € The author of the publication requiring the use of line drawings? *or*
- € Other (please indicate): .....

2.3.2 Where do you usually source your line drawings/illustrations?

- € From in-house designers as part of their regular employment
- € From freelancers - either editors or illustrators (complete 2.3.2.1)
- € From clip art
- € From third party publishers' publications
- € Other (please indicate): .....

2.3.2.1 Which of the following best describes your agreements with the majority of freelancers you use to prepare line drawings and illustrations?

- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of the line drawings/illustrations prepared for your publications, *or*
- € You obtain written agreements which grant your company limited rights to the use of the line drawings/illustrations prepared for your publications,  
Give examples ..... *or*
- € You have verbal agreements which grant you limited rights to use the line drawings/illustrations prepared for your publications, *or*
- € You have verbal agreements which grant all rights to use the line drawings/illustrations prepared for your publications, *or*
- € Other: .....

2.3.3 Who normally pays any permission/commission fees relating to the use of the line drawings/illustrations used in your company's publications? .....

2.3.4 In regard to line drawings/illustrations, were you aware of the change made to the Copyright Act last year? € Yes € No

2.3.5 Have any of your policies or procedures relating to the use of line drawings/illustrations changed since the Copyright Act was amended? € Yes € No

If YES, in which ways have they changed:.....

.....

If NO, are they likely to change in the near future? € Yes € No

If YES, in which ways might they change?

.....

Comments:.....

.....

.....

.....

.....

.....

.....

.....



**2.4 GRAPHS/TABLES**

You mention that you use graphs/tables regularly. Focusing on this category:

2.4.1 Who normally obtains (commissions/buys/negotiates) for the graphs/tables used in your company's publications?

- € Art/design department, *or*
- € Specialist rights/permissions officer employed by the company, *or*
- € In-house editor of the particular publication requiring graphs/tables, *or*
- € The freelance editor/packager from whom you are buying services/books, *or*
- € The author of the publication requiring the use of graphs/tables, *or*
- € Other (please indicate): .....

2.4.2 Where do you usually source the graphs/tables used in your company's publications?

- € From employees as part of their regular employment
- € From freelancers - either editorial or graphic (complete 2.4.2.1)
- € From third party publisher material (eg ABS)?
- € Other (please indicate): .....

2.4.2.1 Which of the following best describes your agreements with the majority of freelancers you use to prepare graphs/tables?

- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of the graphs/tables used in your publications, *or*
- € You obtain written agreements which grant your company limited rights to the use of the graphs/tables used in its publications  
Give examples .....
- € You have verbal agreements which grant you limited rights to use the graphs/tables in your publications, *or*
- € You have verbal agreements which grant all rights to use the graphs/tables prepared for your publications, *or*
- € Other: .....

2.4.3 Who normally pays any permission/commission fees relating to the use of graphs/tables in your company's publications? .....

2.4.4 In regard to graphs/tables, were you aware of the change made to the Copyright Act last year? €Yes€No

2.4.5 Have any of your policies or procedures relating to the use of graphs/tables in your publications changed since the Copyright Act was amended? €Yes€No

If YES, in which ways have they changed:.....

.....  
If NO, are they likely to change in the near future? €Yes€No

If YES, in which ways might they change?  
.....

Comments:.....

.....

.....

.....

.....

.....

.....

.....

.....

2.5 **CARTOONS**

You mention that you use cartoons regularly. Focusing on this category:

2.5.1 Who normally obtains (commissions/buys/negotiates) for the cartoons used in your company's publications?

- € Art/design department, *or*
- € Specialist rights/permissions officer employed by the company, *or*
- € In-house editor of the particular publication requiring photographs, *or*
- € The freelance editor/packager from whom you are buying services/books, *or*
- € The author of the publication requiring the use of cartoons, *or*
- € Other (please indicate): .....

2.5.2 Where do you usually source your cartoon material?

- € From newspapers/magazine libraries (complete 2.5.2.1)
- € Direct from cartoonists or their agents (complete 2.5.2.2)
- € Other (please indicate): .....

2.5.2.1 Which of the following best describes your agreements with the majority of newspaper/magazine libraries from which you obtain cartoons?

- € You comply with the written terms/conditions of the supplier?
- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of the cartoons used in your publications, *or*
- € You obtain written agreements which grant your company limited rights to the use of the cartoons used in its publications  
Give examples ..... *or*
- € You have verbal agreements which grant you limited rights to use the cartoons in your publications, *or*
- € You have verbal agreements which grant all rights to use the cartoons in your publications, *or*
- € Other: .....

2.5.2.2 Which of the following best describes you agreements with the majority of the cartoonists (or their agents) with which you deal?

- € You verbally commission obtaining one-off reproduction rights, *or*
- € You verbally commission obtaining both primary and secondary rights, *or*
- € You commission and obtain an assignment of copyright in writing from the cartoonist, *or*
- € Other: .....

2.5.3 Who normally pays any permission/commission fees relating to the use of cartoons used in your company's publications? .....

2.5.4 In regard to cartoons, were you aware of the change made to the Copyright Act last year?

€ Yes € No

2.5.5 Have any of your policies or procedures relating to the use of cartoons changed since the Copyright Act was amended?

€ Yes € No

If YES, in which ways have they changed:.....

.....  
If NO, are they likely to change in the near future?

€ Yes € No

If YES, in which ways might they change?  
.....

Comments:.....

.....

.....

.....

2.6 MAPS/PLANS

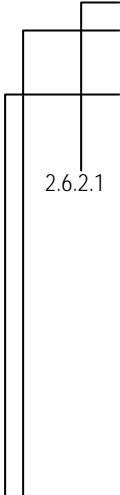
You mention that you use maps/plans regularly. Focusing on this category:

2.6.1 Who normally obtains (commissions/buys/negotiates) for the maps/plans used in your company's publications?

- € Art/design department, or
- € Specialist rights/permissions officer employed by the company, or
- € In-house editor of the particular publication requiring maps/plans, or
- € The freelance editor/packager from whom you are buying services/books, or
- € The author of the publication requiring the use of maps/plans, or
- € Other (please indicate): .....

2.6.2 Where do you usually source the maps/plans used in your publications?

- € From in house employees or your company's own collection of maps/plans
- € From specialist map libraries (complete 2.6.2.1)
- € Direct from individual cartographers or their agents (complete 2.6.2.2)
- € From freelance illustrators?
- € From architects (complete 2.6.2.2.)
- € Other (please indicate): .....



2.6.2.1 Which of the following best describes your agreements with the majority of stock libraries from which you obtain maps/plans?

- € You comply with the written terms/conditions of the supplier?
- € You obtain written agreements which assign to your company all rights (both primary and secondary) to the use of the maps/plans used in your publications, or
- € You obtain written agreements which grant your company limited rights to the use of the maps/plans used in its publications
- Give examples ....., or
- € You have verbal agreements which grant you limited rights to use the specific maps/plans in your publications, or
- € Other: .....

2.6.2.2 Which of the following best describes you agreements with the majority of individual cartographers and/or architects with which you deal?

- € You verbally commission obtaining one-off reproduction rights, or
- € You verbally commission obtaining all rights (both primary and secondary rights), or
- € You commission and obtain in writing an assignment of copyright from the cartographer/architect, or
- € Other: .....

2.6.3 Who normally pays any permission/commission fees relating to the use of maps/plans used in your company's publications? .....

2.6.4 In regard to maps/plans, were you aware of the change made to the Copyright Act last year? €Yes€No

2.6.5 Have any of your policies or procedures relating to the use of maps/plans changed since the Copyright Act was amended? €Yes€No

If YES, in which ways have they changed:.....

.....

If NO, are they likely to change in the near future? €Yes€No

If YES, in which ways might they change?

.....

Comments:.....

.....

.....

Thank you for your assistance.

## APPENDIX 3: APA MEMBER SURVEY

### USE OF ARTISTIC WORK IN AUSTRALIAN PUBLICATIONS

Dear APA member

As you will be aware, last year the federal government amended the Copyright Act. The changes mean that from July 1988:

(a) visual artists are now entitled to reproduction fees for work photocopied under statutory licence by the education sector. Under the changes any money paid for photocopying a page of text that includes any 'artistic work provided for the purpose of explaining or illustrating the text' is to be paid 50% to the owners of copyright in the text and 50% to the owners of copyright in the artwork; and

(b) for photographs taken after 30 July 1998, the first owner of copyright is now the photographer, unless the photograph is taken for a 'private or domestic' purpose, the client is not resident in Australia, or the photographer has specifically assigned the copyright.

The definition of artistic works includes photographs, fine artworks (such as paintings, lithographs, and screenprints), line drawings, illustrations, graphs/tables, cartoons, maps and plans. A requirement for copyright protection is that the work be original.

Because the amendment to the Act will affect the next distribution of fees for pages copied under statutory licence, CAL, with the co-operation of the APA, is researching current practice, patterns of ownership and contractual arrangements covering the use of artistic works in Australian publications.

If your company has already been interviewed for this survey, please disregard this request. If you have not been contacted, would you please complete the attached questionnaire and return to the address listed overleaf.

All results will be aggregated, so confidentiality is assured. We do, however, ask you to provide your name and telephone number for verification purposes.

If you would prefer to have the survey emailed to you, please contact [mwebster@holkey.net.au](mailto:mwebster@holkey.net.au).

Your co-operation is appreciated

**1** Which of the following types of artistic work do you use regularly in your publications?

- € photographs If ticked, please answer Q 2
- € artworks If ticked, please answer Q 3
- € line drawings/illustrations If ticked, please answer Q 4
- € graphs/tables If ticked, please answer Q 5
- € cartoons If ticked, please answer Q 6
- € maps and plans If ticked, please answer Q 7

**2 PHOTOGRAPHS**

**2.1** Who normally obtains (commissions/buys/ negotiates) photographic work used in your publications? (If more than one, please % each against your total use of photographs)

- € Art/design/production department
- € Specialist rights/permissions officer
- € In-house editor/commissioning editor
- € Freelance editor/packager
- € The author

**2.2** Where do you usually source photographs used in your publications? (If more than one, please % each against your total use of photographs)

- € From photo libraries
- € By commissioning freelance photographers
- € By using staff in their capacity as employees
- € By using the author's own photographs
- € From in-house photo stock

**2.3** If you regularly use photo libraries, which of the following best describes your agreement with the majority of them?

- € You comply with their written terms and conditions
  - € You negotiate over their terms and conditions
- If you negotiate, please indicate the most common points of negotiation

- 2.4 If you regularly commission freelance photographers, what best describes your agreement with them? (If more than one, please % each against your total use of commissioned photographs)
- € You verbally obtain limited, specific rights
  - € You verbally obtain an assignment of copyright
  - € You obtain in writing an assignment of copyright
  - € You obtain in writing limited, specific rights
  - € Other
- .....

- 2.5 Who normally pays fees relating to the acquisition/use of photographs? (If more than one, please % each against your total use of photographs)
- € Company    € Author    € Other:.....

**3 ARTWORKS (FINE ART)**

- 3.1 Who normally obtains (commissions/buys/ negotiates) the fine art reproductions used in your publications? (If more than one, please % each against your total use of artworks)
- € Art/design/production department
  - € Specialist rights/permissions officer
  - € In-house editor/commissioning editor
  - € Freelance editor/packager
  - € The author

- 3.2 Where do you usually obtain the right to use fine art reproductions? (If more than one, please % each against your total use of artworks)
- € From galleries, libraries or picture libraries
  - € Direct from artists or their agents
  - € From a copyright collecting society

- 3.3 If you regularly deal with galleries and/or libraries, which of the following best describes your agreement with the majority of them?
- € You comply with their written terms and conditions
  - € You negotiate over their terms and conditions
- If you negotiate, please indicate the most common points of negotiation
- .....

- 3.4 If you regularly deal direct with artists or their agents, what best describes your agreement with them?
- € You verbally obtain limited, specific rights
  - € You obtain in writing an assignment of copyright
  - € You obtain in writing limited, specific rights
  - € Other .....

- 3.5 Who normally pays fees relating to the use of artworks? (If more than one, please % each against your total use of artworks)
- € Company                      € Author                      € Other:.....

**4 LINE DRAWINGS/ILLUSTRATIONS**

- 4.1 Who normally obtains (commissions/buys/ negotiates) line drawings/illustrations used in your publications? (If more than one, please % each against your total use of line drawings/illustrations)
- € Art/design/production department
  - € Specialist rights/permissions officer
  - € In-house editor/commissioning editor
  - € Freelance editor/packager
  - € The author

- 4.2 Where do you usually source line drawings/ illustrations used in your publications? (If more than one, please % each against your total use of line drawings/illustrations)

- € From in-house designers
- € From freelancers
- € From clip art
- € Other.....

- 4.3 If you regularly use freelance illustrators to prepare line drawings/illustrations, which of the following best describes your agreements with them?
- € You verbally obtain limited, specific rights
  - € You obtain in writing an assignment of copyright
  - € You obtain in writing limited, specific rights
  - € Other .....

- 4.4 Who normally pays fees relating to the use of line drawings/illustrations? (If more than one, please % each against your total use of line drawings/illustrations) € Company € Author € Other:.....

**5 GRAPHS/TABLES**

- 5.1 Who normally produces the graphs/tables used in your publications? (If more than one, please % each against your total use of graphs/tables)
- € Employees
  - € Typesetter
  - € Freelance designer
  - € The author
  - € Third party publisher

- 5.2 If you regularly use freelancers and/or typesetters to prepare graphs/tables, which of the following best describes your agreements with them?
- € You verbally obtain limited, specific
  - € You obtain in writing an assignment of copyright
  - € You obtain in writing limited, specific rights
  - € You treat graphs/tables as text and don't seek separate rights

- 5.3 Who normally pays fees relating to the preparation of graphs/tables? (If more than one, please % each against your total use of line drawings/illustrations) € Company € Author € Other:.....

**6 CARTOONS**

- 6.1 Where do you normally source the cartoons used in your publications? (If more than one, please % each against your total use of cartoons)
- € Employees
  - € Freelance illustrator/cartoonists you commission
  - € Third party publishers (eg newspaper)

- 6.2 If you regularly commission cartoonists to prepare cartoons for you, which of the following best describes your agreements with them?
- € You verbally obtain limited, specific rights
  - € You obtain in writing an assignment of copyright
  - € You obtain in writing limited, specific rights
  - € Other

- 6.3 If you regularly obtain pre-published cartoons from third party publishers, or the cartoonists themselves, which of the following best describes your agreement with the majority of them?
- € You comply with their written terms and conditions
  - € You negotiate over their terms and conditions
- If you negotiate, please indicate the most common points of negotiation

- 6.4 Who normally pays fees relating to the preparation of cartoons? (If more than one, please % each against your total use of cartoons) € Company € Author € Other:.....

**7 MAPS/PLANS**

7.1 Where do you normally source the maps/plans used in your publications? (If more than one, please % each against your total use of maps/plans)

- Map libraries
- Employees and/or company owned stock
- We commission illustrators/cartographers
- The author provides finished art
- We use previously published maps/plans from third party publishers

7.2 If you regularly commission new maps/plans, which of the following best describes your agreements with the illustrator/cartographer?

- You verbally obtain limited, specific rights to the Material being prepared
- You obtain in writing an assignment of copyright
- You obtain in writing limited, specific rights

7.3 Who normally pays fees relating to the preparation of maps/plans? (If more than one, please % each against your total use of maps and plans)

- Company
- Author
- Other:.....

**8 CHANGES TO THE COPYRIGHT ACT**

8.1 Were you aware that the changes to the Copyright Act last year meant that from July 1998:

(a) visual artists are now entitled to receive reproduction fees from the existing pool of funds for work photocopied under statutory licence by the education sector.

- Yes
- No

(b) under the changes, any money paid for photocopying a page of text that includes any 'artistic work provided for the purpose of explaining or illustrating the text' is now to be paid 50% to the owners of copyright in the text and 50% to the owners of copyright in the artwork

- Yes
- No

(c) for photographs taken after 30 July 1998, the first owner of copyright is now the photographer, unless the photograph is taken for a 'private or domestic' purpose, the client is not resident in Australia, or the photographer has specifically assigned the copyright.

- Yes
- No

8.2 Have any of your policies or procedures relating to the use of artistic works changed since the Copyright Act was amended last year?

- Yes
- No

If NO, are they likely to change in the near future?

- Yes
- No

If YES, how might they change?

.....

For verification purposes, this questionnaire was completed by

Name: .....

Company:.....

Telephone:.....

Thank you for participating. Please return the completed survey to WebsterAAP, 75 Napier Street, South Melbourne 3205, fax 03-96450048. If you have any queries, please contact Michael Webster at WebsterAAP on tel 03-96450048. APA/CALsurvJuly99

.....

## APPENDIX 4: ABP SURVEY

Dear ABP member

Because the amendments to the Copyright Act in 1998 will affect the next distribution of fees for pages copied under statutory licence, Copyright Agency Limited, of which you may be a member, with the co-operation of the ABP, is researching through WebsterAAP Pty Ltd current practice, patterns of ownership and contractual arrangements covering the use of artistic works in Australian publications.

If your company has already been personally interviewed for this survey, please disregard this request. If you have not been contacted, we would appreciate you taking a few minutes to complete the attached questionnaire and returning it to the address listed overleaf.

All results will be aggregated, so confidentiality is assured. We do, however, ask you to provide your name and telephone number for verification purposes.

If you would prefer to have the survey emailed to you, please contact [mwebster@hotkey.net.au](mailto:mwebster@hotkey.net.au).

Your co-operation is much appreciated.

### 1 CHANGES TO THE COPYRIGHT ACT

- 1.1 Were you aware that the changes to the Copyright Act last year meant, from July 1998:
- (a) that visual artists are now entitled to receive reproduction fees from the existing pool of funds for work photocopied under statutory licence by the education sector.  Yes  No
- (b) that under the changes, any money paid for photocopying a page of text that includes any 'artistic work provided for the purpose of explaining or illustrating the text' is now to be paid 50% to the owners of copyright in the text and 50% to the owners of copyright in the artwork  Yes  No
- (c) that for photographs taken after 30 July 1998, the first owner of copyright is now the photographer, unless the photograph is taken for a 'private or domestic' purpose, the client is not resident in Australia, or the photographer has specifically assigned the copyright.  Yes  No
- 1.2 Have any of your policies or procedures relating to the use of artistic works changed since the Copyright Act was amended last year?  Yes  No  
If NO, are they likely to change in the near future?  Yes  No  
If YES, how might they change?  
.....
- 1.3 Are you a member of Copyright Agency Limited?  Yes  No

### 2 USE OF ARTISTIC WORK

- 2.1 Which of the following types of artistic work do you use regularly in your publications?
- photographs If ticked, please answer Q 3
- artworks If ticked, please answer Q 4
- line drawings/illustrations If ticked, please answer Q 5
- graphs/tables If ticked, please answer Q 6
- cartoons If ticked, please answer Q 7
- maps and plans If ticked, please answer Q 8

### 3 PHOTOGRAPHS

- 3.1 Who normally obtains (commissions/buys/ negotiates) photographic work used in your publications? (If more than one, please % each against your total use of photographs)
- In house art/design/production department
- In house specialist rights & permissions officer
- In-house editor/commissioning editor/journalist
- Freelance editor/journalist
- Other (please indicate).....
- 3.2 Where do you usually source photographs used in your publications? (If more than one, please % each against your total use of photographs)
- From photo libraries
- By commissioning freelance photographers
- By using staff in their capacity as employees
- By using journalists's own photographs
- From in-house photo stock
- From handouts and other random sources



- 3.3 If you regularly use photo libraries, which of the following best describes your agreement with the majority of them?  
 You comply with their written terms and conditions  
 You negotiate over their terms and conditions  
 If you negotiate, please indicate the most common points of negotiation  
 .....
- 3.4 If you regularly commission freelance photographers, what best describes your agreement with them? (If more than one, please % each against your total use of commissioned photographs)  
 You verbally obtain limited, specific rights  
 You verbally obtain an assignment of copyright  
 You obtain in writing an assignment of copyright  
 You obtain in writing limited, specific rights
- 3.5 Who normally pays any fees relating to the acquisition/use of photographs? (If more than one, please % each against your total use of photographs)  
 Company     freelance journalist     Other:.....

**4 ARTWORKS (FINE ART)**

- 4.1 Who normally obtains (commissions/buys/ negotiates) the fine art reproductions used in your publications? (If more than one, please % each against your total use of artworks)  
 In house art/design/production department  
 In house specialist rights/permissions officer  
 In-house editor/commissioning editor/journalist  
 Freelance editor/journalist
- 4.2 Where do you usually obtain the right to use fine art reproductions? (If more than one, please % each against your total use of artworks)  
 From galleries, libraries or picture libraries  
 Direct from artists or their agents  
 From a copyright collecting society(eg, VISCOPY)
- 4.3 If you regularly deal with galleries and/or libraries, which of the following best describes your agreement with the majority of them?  
 You comply with their written terms and conditions  
 You negotiate over their terms and conditions  
 If you negotiate, please indicate the most common points of negotiation  
 .....
- 4.4 If you regularly deal direct with artists or their agents, what best describes your agreement with them?  
 You verbally obtain limited, specific rights  
 You obtain in writing an assignment of copyright  
 You obtain in writing limited, specific rights  
 Other .....
- 4.5 Who normally pays fees relating to the use of artworks? (If more than one, please % each against your total use of artworks)  
 Company     Freelance journalist     Other:.....

**5 LINE DRAWINGS/ILLUSTRATIONS**

- 5.1 Who normally obtains (commissions/buys/ negotiates) line drawings/illustrations used in your publications? (If more than one, please % each against your total use of line drawings/illustrations)  
 In house art/design/production department  
 In house specialist rights/permissions officer  
 In-house editor/commissioning editor/journalist  
 Freelance editor/journalist
- 5.2 Where do you usually source line drawings/ illustrations used in your publications? (If more than one, please % each against your total use of line drawings/illustrations)  
 From in-house designers  
 From freelancers  
 From clip art  
 Other (please indicate): .....
- 5.3 If you regularly use freelance illustrators to prepare line drawings/illustrations, which of the following best describes your agreements with them?  
 You verbally obtain limited, specific rights  
 You obtain in writing an assignment of copyright

- €You obtain in writing limited, specific rights
- €Other .....

- 5.4 Who normally pays fees relating to the use of line drawings/illustrations? (If more than one, please % each against your total use of line drawings/illustrations)
- €Company
  - €Freelance journalist
  - €Other:.....

**6 GRAPHS/TABLES**

- 6.1 Who normally produces the graphs/tables used in your publications? (If more than one, please % each against your total use of graphs/tables)
- €Employees
  - €Typesetter
  - €Freelance designer
  - €Third party publisher

- 6.2 If you regularly use freelancers and/or typesetters to prepare graphs/tables, which of the following best describes your agreements with them?
- €You verbally obtain limited, specific
  - €You obtain in writing an assignment of copyright
  - €You obtain in writing limited, specific rights
  - €You treat graphs/tables as text and don't seek separate rights

- 6.3 Who normally pays fees relating to the preparation of graphs/tables? (If more than one, please % each against your total use of line drawings/illustrations)
- €Company
  - €Freelance journalist
  - €Other:.....

**7 CARTOONS**

- 7.1 Where do you normally source the cartoons used in your publications? (If more than one, please % each against your total use of cartoons)
- €Employees
  - €Freelance illustrator/cartoonists you commission
  - €Third party publishers (eg newspaper)

- 7.2 If you regularly commission cartoonists to prepare cartoons for you, which of the following best describes your agreements with them?
- €You verbally obtain limited, specific rights
  - €You obtain in writing an assignment of copyright
  - €You obtain in writing limited, specific rights
  - €Other

- 7.3 If you regularly obtain pre-published cartoons from third part publishers, or the cartoonists themselves, which of the following best describes your agreement with the majority of them?
- €You comply with their written terms and conditions
  - €You negotiate over their terms and conditions
- If you negotiate, please indicate the most common points of negotiation

- 7.4 Who normally pays fees relating to the preparation of cartoons? (If more than one, please % each against your total use of cartoons)
- €Company
  - €Author
  - €Other:.....

**8 MAPS/PLANS**

- 8.1 Where do you normally source the maps/plans used in your publications? (If more than one, please % each against your total use of maps/plans)
- €Map libraries
  - €Employees and/or company owned stock
  - €We commission illustrators/cartographers
  - €The freelance journalist provides finished art
  - €We use previously published maps/plans from third party publishers

- 8.2 If you regularly commission new maps/plans, which of the following best describes your agreements with the illustrator/cartographer?
- €You verbally obtain limited, specific rights to the material being prepared
  - €You obtain in writing an assignment of copyright
  - €You obtain in writing limited, specific rights

8.3 Who normally pays fees relating to the preparation of maps/plans? (If more than one, please % each against your total use of maps and plans)  
€Company    €Author/journalist    €Other:.....

**9 VERIFICATION**

While confidentiality is assured, for verification purposes and to send survey results, please complete the following:  
This questionnaire was completed by

Name: .....  
Company:.....

Address for receipt of survey results:

.....  
..... P'code:.....

Email (if you'd prefer to receive results by email): .....

Telephone:.....

Thank you for participating.

Please return the completed survey to WebsterAAP, 75 Napier Street, South Melbourne 3205, fax 03-9645 0048.  
If you have any queries, please contact Michael Webster at WebsterAAP on tel 03-9645 0031, email:  
mwebster@hotmail.net.au

Copyright Agency Limited (CAL) is a statutory collecting society that collects photocopying licence fees on behalf of authors and publishers. There is no charge for membership. If you'd like to know more about CAL, please tick below, or visit CAL's website: [www.copyright.com.au](http://www.copyright.com.au).

€Please send information on CAL to the above address.

## APPENDIX 5: VISUAL ARTISTS' SURVEY

Name of visual artist/company Code:.....

Address

Telephone:

Fax :

Email

Artforms practised (for publishing purposes):

Association/collecting society membership(s)?

Date of interview

Interviewer

---

### BACKGROUND

The aim of this project is to identify current practice, patterns of ownership and contractual arrangements for the use of artistic works in Australian publications.

The study is surveying a representative sample of Australian publishers and visual artists in an attempt to reconcile the understanding of the ownership of rights from each perspective.

The results of the project will assist the collecting societies, CAL and VISCOPY, to implement the changes to the distribution of fees for pages copied under statutory licence that include both literary works and artistic works. All responses are confidential and will be aggregated.

### CHANGES TO THE COPYRIGHT ACT

In July 1998 the government amended the Copyright Act. The changes mean that from 1 July 1998:

- ◆ Visual artists are now entitled to reproduction fees for all work photocopied by the education sector. The changes to the law now provide that any money paid for photocopying a page of text that includes artwork 'provided for the purpose of explaining or illustrating the text' is now to be paid 50% to the owners of copyright in the text and 50% to the owners of copyright in the artwork.
- ◆ For photographs taken after 30 July 1998, the first owner of copyright is now the photographer, unless the photograph is taken for a 'private or domestic' purpose, the client is not resident in Australia, or the photographer have agreed otherwise.

For the purposes of this study the definition of 'works' would include fine artworks (such as paintings, lithographs, and screenprints), line drawings, graphs/tables, cartoons, photographs, sculpture, architectural and graphic design, maps and plans, etc. A requirement for copyright protection is that the work be original.

1 Please identify your publishing client base. Please weight each as a % of your total work for the publishing industry.

€ Books:

€Primary school	.....%
€Secondary school	.....%
€TAFE/training	.....%
€academic text/reference	.....%
€Professional reference	.....%
€Childrens	.....%
€adult fiction/non-fiction	.....%

€ Magazines/journals:

€Professional/educational	.....%
€general consumer	.....%
€specialised consumer	.....%
€specialist childrens	.....%
€Advertising industry	.....%
€Newspapers	.....%
€Corporate	.....%
€Other	.....%
.....	<u>.....%</u>
	<u>100 %</u>

- 2 If you are photographer/photo library, please identify any areas of speciality (eg, medical/food/ aerial)  
 .....  
 .....
- 3 Do you or your company have a blanket copyright policy covering the use of all artistic work managed by you?  
 €Yes€No
- 4 Which of the following best describes your/your company's copyright management practices regarding artistic works?  
 (If more than one, please estimate % for each)
- €You are a full/part-time employee
  - €Your client commissions you in writing, buying both primary and secondary rights (ie, an assignment of copyright) to your work
  - €Your client commissions you in writing, buying limited, specific rights to your work. (Please give examples.)
  - €You make verbal agreements with your clients giving them all rights to your work
  - €You make verbal agreements with your clients giving them limited, specific rights
  - €You assign in writing all copyright to non-commissioned work
  - €You issue your own written agreement giving the client limited, specific rights
  - €You licence use of an image to the client for one off use only
  - €Other (please elaborate):.....  
 .....
- 5 Who normally commissions/buys/negotiates with you for the use of your artistic work in Australian publications?  
 €Publisher's art/design/production dept, *or*  
 €Publisher's rights/permissions dept, *or*  
 €Editor of the particular publication wishing to use your work, *or*  
 €The author of the publication/article wishing to use your work, *or*  
 €Other (please indicate):
- 6 In your dealing with publishers, do you negotiate  
 €yourself, direct with the publisher  
 €indirectly, through your agent  
 €Other (please indicate):
- 7 If you are an agency/library, do all staff comply with your company's copyright management policies and procedures?  
 €Yes€No  
 If NO, what are exceptions?
- 8 Are freelancers (editors and/or packagers) informed of your copyright policy?  
 €Yes€No  
 If YES, do they comply with them  
 €Always €Mostly €Rarely  
 If 'rarely' why do you think this is the case?  
 .....
- 9 How do you inform staff (and freelancers) of your copyright policy?  
 .....
- 10 Are you aware of the changes made to the Copyright Act last year in regard to:  
 Ownership of photographs? €Yes€No  
 Inclusion of all artistic work under the statutory copying payment scheme? €Yes€No
- 11 Have any of your copyright policies or practices changed since the Copyright Act was amended in July 1998?  
 €Yes€No  
 If YES, in which ways have they changed?  
 If NO, are they likely to change in the near future? €Yes€No  
 If YES, how do you think they will change?
- 12 Are you aware of any significant changes to your copyright management policy or practices in the last 5 years?  
 €Yes€No  
 If YES, what were the changes?  
 .....  
 .....  
 .....

13 Who normally pays your fees? (please estimate % over all uses of your work in publications)

- € The publisher .....%
- € The author/journalist .....%
- € The stylist .....%
- € Other (please indicate): .....

14 If you provide images free of charge for review or promotional purposes, do you know that you retain the copyright for secondary use? € Yes € No

15 Are you aware of any infringements of your copyright in the print media? € Yes € No

If YES, please give examples?  
.....

Thank you for participating

---

## APPENDIX 6: PHOTOGRAPHERS SURVEY (*Photo & Image 99*)

This survey is being conducted as part of a project commissioned by Copyright Agency Ltd and VISCOPY Ltd. The objective of the project is to identify current practice, patterns of ownership and contractual arrangements for the use of artistic works in Australian publications. The information you give will be combined with all other participants in the survey. Your identity will be confidential to the consultants working on the project: Patricia Watson and Michael Webster.

Name of Photographer

Telephone number (optional)

- 1 Please indicate if your images are used for the following purposes:  
*Please tick all relevant boxes*

<input type="checkbox"/> Magazine/newspaper editorial	<input type="checkbox"/> Book publishing
<input type="checkbox"/> Advertising	<input type="checkbox"/> Commerce (eg annual reports)
<input type="checkbox"/> Other ( <i>please specify/include electronic publishing</i> )	

- 2 For each of these categories please tell us how often YOU retain complete ownership of copyright.  
*Please give your estimate as % of past twelve months work.*

	You retain copyright?	When you give it away is it via: Written contracts?	Oral agreements?	Total
Magazine/newspaper editorial				100%
Book publishing				100%
Advertising				100%
Commerce				100%
Other				100%

- 3 If you share copyright with the client please indicate the arrangement:

Magazine/newspaper editorial

Book publishing

Advertising

Commerce

Other

THANK YOU FOR YOUR TIME

This questionnaire can be faxed to (03) 9645 0048

## ACKNOWLEDGEMENTS



Assistance in all aspects of the preparation of this report was provided by individuals throughout the publishing and artistic communities, whether representing themselves or their companies.

Because surveying was undertaken on a confidential basis, individuals cannot be thanked. Suffice to say that the consultants acknowledge the willingness of so many to give of their time and provide what in other circumstances may be considered confidential information. It is appreciated.

Patricia Watson  
Michael Webster

September 1999

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