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Dear Sir

Copyright Licensing and collecting societies: a guide for copyright licensees

Thank you for the opportunity to comment on the draft guide entitled "Copyright Licensing and collecting societies: a guide for copyright licensees" (**Guide**).

About the Arts Law Centre of Australia

The Arts Law Centre of Australia (**Arts Law**) was established in 1983 and is the national community legal centre for the arts.

Arts Law provides legal advice, publications, education and advocacy services each year to over 2500 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients

Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them. Our clients are operating arts businesses across all art sectors, on low income (with limited funds) and are creators of their own material and user's of other artist's work.

We make the following brief comments about the Guide:

1. The copyright notice

Under the heading "What is copyright?" there is discussion about what copyright protects and that it is not a system of registration in Australia. Associated with the issue of whether copyright needs to be registered is the use of the copyright notice (ie © Name, Year). It may be useful to point out that it is also not necessary to include the copyright notice on material for it to get copyright protection as it is a common myth amongst some copyright users that if the work does not have a © symbol on it, that it is not protected.

2. The "substantial part" requirement

Under the heading "What is copyright?" on page 7, there is material about when copyright is infringed. It would be useful to explain the requirement that a "substantial" part of another person's material must be used in a way that exercises

the exclusive rights of the copyright owner without permission, in order to infringe copyright.

As the Guide is currently drafted there is no reference to the need for a “substantial” part of another’s material to be reproduced, published, performed, communicated etc... before there is infringement.

In our experience, there is confusion in the arts world (on the side of users and creators) about what constitutes a “substantial” part for the purposes of copyright. It would be useful to address this issue in a Guide targeted at copyright users, including other artists wanting to use someone else’s work.

3. **Material on the internet**

Again relating to the “What is copyright?” section on pages 7-8, another common myth amongst users of material is that if material is available on the internet then it is in the “public domain” and no longer protected by copyright. As you are no doubt aware this is not the case and one of the exclusive rights of copyright owners is to communicate work to the public. It would be useful to dispel this myth by adding a comment that the rules discussed in this section also apply to material available on the internet and sometimes a licence may be required to use such material.

4. **Copyright exceptions**

We note that some exceptions to copyright infringement are explained on page 8. We suggest incorporating some of the recent changes to the Copyright Act by also referring to the format and time shifting exceptions and the exception for material used for the purposes of parody and satire. These are likely to be important exceptions to all users of copyright material.

5. **Availability of further information on copyright**

As outlined above, Arts Law is the national community legal centre for the arts and as such provides free or low cost advice to artists and arts organisations. On page 9 you provide details of places where people can obtain more copyright information, listing the Attorney-General’s Department and the Australian Copyright Council. We suggest including the Arts Law Centre of Australia in this list and explaining that it provides advice to artists and arts organisations only. This is one avenue for particular users of material to obtain independent legal advice and more information.

6. **Collecting societies**

We refer to pages 11-12 where other agencies such as ASDACS and AWGACS are referred to. We suggest, for the purposes of clarity, including in the explanation of what these agencies do, who they distribute money to, for example for AWGACS that they collect and pay royalties to writers of a film or TV script only (i.e not all authors of any literature).

Please contact us if you would like to discuss any of these points further.

Yours faithfully



Robyn Ayres
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Arts Law Centre of Australia