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Mr David Hatfield
Director, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

16th January 2012

Dear Mr Hatfield

FILE No:
DOC:
MARS/PRISM:



Re: Viscopy Ltd and Copyright Agency Ltd application for authorisation A91285/86

The National Association for the Visual Arts (NAVA) is pleased to have the opportunity to make a submission in relation to the application for authorisation by Viscopy Ltd and Copyright Agency Ltd.

NAVA affirms its understanding that the purpose of copyright is to ensure that creators of works gain appropriate financial remuneration for their efforts while enabling community access to the cultural products that result from their work. The role of copyright collection and distribution agencies is to achieve viable processes and economies of scale by providing collective administration and enabling the provision of licenses through a centralised agency.

The National Association for the Visual Art (NAVA) is the peak body representing and advancing the professional interests of the Australian visual arts, craft and design sector. Since its establishment in 1983, NAVA has been very influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry. It provides leadership to the sector and sets industry standards. It also provides direct service to constituents through offering expert advice, representation, resources and a range of other services.

As background to NAVA's submission, it should be noted that NAVA was principally responsible for the establishment of Viscopy in 1995 and in accordance with Viscopy's Articles of Association, continues to nominate three members to the Viscopy Board. NAVA also has worked with the Copyright Agency most recently having a representative on its Resale Royalty Artist Advisory Group. Over the years NAVA has often worked collegially with both Viscopy and the Copyright Agency in setting industry standards, in advocacy campaigns (eg securing a resale royalty scheme) and in sector education about copyright issues.

NAVA maintains these interests because it has a continuing vested interest in ensuring delivery of appropriate copyright services and payments to Australian visual arts, craft and design practitioners and efficient licensing services to the rest of the visual arts infrastructure (eg galleries, auction houses, education institutions, funding bodies and other art professional entities) and others.

NAVA understands that the proposed five year service agreement between Viscopy and Copyright Agency would see Viscopy employees and most assets transferred to the Copyright Agency. Viscopy would continue to maintain an independent Board of Directors, separate membership databases and agreements, separate licensing agreements and international agreements with affiliated national and international organisations.

Of great significance in this matter is the fact that both organisations are not-for-profit entities with public service charters and are not driven by private profit making motives. In addition, NAVA believes there is only small overlap in the licensing activities for visual artists by the two organisations.

The Copyright Agency Limited is the declared society for various forms of statutory licensing eg the educational statutory licence and administering the Resale Royalty Right Scheme for visual artists. It also licenses copying of print material by a range of users both in Australia and overseas. Its membership is larger than solely visual arts creators and is comprised of Australian authors, journalists, surveyors, publishers and commercial photographers as well as artists (mostly illustrators). Relevant to this case is that under the statutory licence it collects licence fees for owners of copyright in all visual artistic works including artworks in all mediums (eg painting, sculpture prints, media art, craft and design works), photographs, illustrations, cartoons and plans, charts and diagrams.

Viscopy is a specifically visual arts focused not-for-profit copyright collecting society which assist its artist members and its affiliated society members to earn income from their work by:

- granting image copying licenses to organisations and individuals and
- distributing royalties from licensing by other collecting societies.

It also undertakes lobbying and advocacy on copyright matters and education of artists about their copyright entitlements.

Membership of both entities is voluntary and free and each deducts an administration fee from payments to creators of content. However, where Viscopy passes on to its members their statutory licence payments, they charge an additional administration fee. This means that their members are having to pay substantially larger administration fees compared with those charged to Copyright Agency members.

NAVA believes that the public benefit resulting from this proposed service agreement will greatly outweigh any public detriment. In any case, the two organisations largely provide different services and expertise and deal with different client groups. While NAVA acknowledges that the potential dangers are collusion in charging higher copyright licensing fees and a diminution of the level of payment to artistic creator copyright holders, they are regulated by the *Code of Conduct for Copyright Collecting Societies* in relation to licence fees and the Copyright Tribunal in relation to statutory and voluntary licence schemes. In relation to voluntary licensing, there are several other bodies which will continue to compete. In addition, we believe that in Viscopy and Copyright Agency maintaining separate Boards responsible for policy and oversight of delivery against strategic business plans, the potential for anti-competitive behaviour will ensure there is little difference from the current situation.

As the peak body with particular concern for the wellbeing of artists, NAVA will be vigilantly maintaining a watching brief to ensure that the services and level of payments to artistic creators are sustained and improved with the new arrangement.

In addition to economies of scale in administration, NAVA sees the advantage of the proposed new arrangement as allowing for artistic creators to benefit from:

- minimisation of access challenges through having a one stop shop ie only having to deal with one licensor
- increased earnings through minimised administration charges to visual artists
- efficiencies in the application of sophisticated and state of the art copyright management and distribution systems and speeding up of payments
- shared expertise between the two organisations resulting in more comprehensive and improved quality of personalised service
- increased opportunities for both organisations to expand the scope for their members, thus achieving greater reach and increased coverage
- establishing an on-line image bank of artistic works from which can be drawn works to be licensed
- provision of improved visual arts copyright education services, lobbying and policy reform advocacy.

NAVA is concerned that currently Viscopy is faced with needing to contract its costs or increase its fees in order to remain financially viable. Either way this will be of detriment to artists. NAVA believes the proposed service agreement provides an elegant solution to this problem, without affecting the current competitive climate.

In addition, in Viscopy securing services from Copyright Agency, the strength of Copyright Agency can be brought to bear in the case of legally enforcing artists' rights in the case of copyright breach. Viscopy does not have the resources to bring legal cases nor are individual creators usually in the position to bear the very great costs of litigation.

NAVA also believes that the strengthening of the two organisations to deliver their services and economise on administration costs is particularly important in the current environment where artists are finding it increasingly challenging to earn a living from their practice and the art market is subject to the volatility of the international economic situation.

For all the reasons given above, NAVA supports this proposal and is happy to provide further comment if required.

Yours sincerely

A handwritten signature in black ink, reading 'Tamara Winikoff' with a stylized flourish at the end.

Tamara Winikoff
Executive Director