

Copyright: a public discussion for the digital era

Copyright enforcement review submission, 2023

A New Approach (ANA)

About A New Approach (ANA)

A New Approach (ANA) is Australia's leading think tank focused on arts and culture. We believe Australia can become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential.

Through credible and independent public leadership, ANA helps build an ambitious and innovative policy and investment environment for arts, culture and creativity by turning evidence into belief and action. We work to ensure Australia can be a great place for creators and audiences, whoever they are and wherever they live.

ANA's Board, staff and expert advisory group contribute credible and independent cultural leadership so Australia can reach its potential to become a cultural powerhouse by 2035. ANA is made possible by a unique collaboration of 11 philanthropic partners: The Myer Foundation; Sidney Myer Fund; Tim Fairfax Family Foundation; The Ian Potter Foundation; Neilson Foundation; Minderoo Foundation; Besen Family Foundation; Spinifex Trust; The Keir Foundation; Aranday Foundation; and The Yulgilbar Foundation.

ANA acknowledges the cultures of Aboriginal and Torres Strait Islander peoples in Australia and their continuing cultural and creative practices in this land.

This submission has been prepared by ANA and the opinions expressed do not necessarily represent the views of ANA's funding partners, or advisory groups, or others who have provided input.

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Submitted by: A New Approach (ANA)

Contact: hello@newapproach.org.au

www.newapproach.org.au

A New Approach (ANA)

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Australian Government
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copyright.consultation@ag.gov.au

Copyright: a public discussion for the digital era

This submission provides insights from A New Approach's (ANA) research and analysis program, drawing particular attention to attitudes amongst middle Australians towards arts, culture and creativity, including attitudes toward copyright. It also draws on forthcoming research into the financial inflows to cultural and creative industries to assist in placing copyright revenue into a larger context.

An effective review of the copyright system must acknowledge the rapidly changing context for copyright, with most people in Australia now using and generating copyright material on a daily basis. It also must consider both the direct and indirect role copyright plays in income models.

Our submission covers three themes:

- 1. The changing context of content creation:** Once the province of professional creators with collecting societies to help them collect and protect their copyright income - is now a widespread activity. This quantum change presents new challenges in ensuring our current copyright system works effectively for all Australians.
- 2. The role of copyright in financial inflows:** Effective enforcement of the copyright system underpins both direct copyright revenue, as well as other forms of income generation and the expression of rights.
- 3. Public understanding of copyright:** A potential barrier to this public discussion is that many Australians have a rudimentary understanding of how cultural and creative industries drive economic activity. Our research suggests however that they are aware and supportive of the role the copyright can play in ensuring Australian creators are protected and remunerated.

This submission also includes three recommendations to help ensure Australia's copyright enforcement system is fit for purpose and responsive to this changing environment.

1. To strengthen the operating environment of cultural and creative industries, proceed with the bipartisan proposal for a Productivity Commission inquiry 'into the legislative arrangements which govern funding of artistic programs and activities at all levels of government'.¹
2. As part of the Copyright Enforcement review 2023-23, explore whether copyright plays a more significant role in income within particular sub-sectors to assist in best focusing administrative and enforcement efforts.
3. Following the Copyright Enforcement Review, explore options for strengthening the copyright-focused elements of the Australian Curriculum to improve broad public understanding of the role copyright plays in their own lives (with regard to creation and use of copyright material) as well as the role of copyright-based industries in diversifying and strengthening Australia's economy.

Warm regards



Kate Fielding, CEO, A New Approach (ANA)

Contact

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Copyright in a digital world

From the moment we open our eyes until our head hits the pillow at night, many of us are attached to our smart phones and other digital devices. From posting images on social media, sending memes on group chats, or watching content streamed from around the world or even from space, it's there to inform, connect and entertain.

Over just a few decades, the smart phone and rapidly evolving digital technology has changed the way we live our lives.

Data from early 2023² shows how closely connected we are to the digital world:

- Australia had more than 25 million internet users with internet penetration of 96.2%
- More than four out of five Australians used social media – there were around 21 million social media users (not necessarily unique users), equivalent to 81% of the total population
- Nearly 85% of Australia's total internet user base (regardless of age) used at least one social media platform
- There were more mobile phone connections than people in Australia – nearly 33 million active cellular mobile connections (not necessarily unique connections), equivalent to 125% of the total population

Expanding digital usage has extended into many areas of life previously largely untouched, such as copyright and intellectual property rights.

Digital platforms such as streaming services, social media channels, and newer applications using artificial intelligence (AI) technology, all rely on created content to grow audiences and their digital footprint.

The question of the effectiveness of Australia's copyright laws and whether they remain fit-for-purpose is important – and part of a broader examination of cultural policy in Australia.

For most of us, daily life involves communicating with technology; from shopping to engaging with a government service to communicating with friends and family. Often this involves the creation, use and sharing of content and with it the implicit questions of copyright usage, protection and infringement.

Before widespread connectivity and much cheaper production tools made it possible, daily content creation was largely the domain of professional creators – writers, broadcasters, filmmakers, musicians and others. They have collecting societies – organisations like the Copyright Agency and APRA-AMCOS – to help with collecting, and protecting, their copyright income.

Now all it takes is an internet connection and a phone and you can be a part of the online economy. In its Copyright enforcement review Issues paper, the Attorney-General's Department acknowledges there are up and down sides to this proliferation of digital creation and platforms, from positive impacts like greater access to global markets to the difficulties in policing infringement on a global scale.

It also states: "The Government is committed to copyright laws that protect Australian artists and enable them to earn a living from their creative works. The Australian copyright enforcement regime must remain fit-for-purpose."

Thanks to the digital revolution, most Australians both use and generate copyright material on a daily basis. While this current review focuses primarily on creators and right holders, given the quantum change in which parts of the community are impacted, the ongoing question of whether our current copyright system works effectively is one for all Australians. To be a useful discussion, it requires placing copyright in the context of broader financial inflows as well as a better-informed public.

Copyright and the creative economy in context

Copyright is generally recognised as a measure for incentivising and rewarding creators and other rights holders by protecting their rights to generate income from their unique expression of ideas (not the ideas themselves), and excludes others from unauthorised use of those unique expressions³. This idea is a foundation of the contemporary cultural and creative economy.

ANA's forthcoming research on income generated by intellectual property rights estimates copyright revenue for 2021-22 in Australia at more than \$782.86 million⁴ and distributions at an estimated \$726.24 million. By comparison, revenue for the 2017-18 financial year was estimated at more than \$682.7 and distributions estimated at \$627.71 million (adjusted to 2021-22)⁵. This indicates a growth in copyright revenue of just over 14.5% across four years and a growth in copyright distributions of more than 15.5%.

While this growth is impressive, it is relevant to consider these figures in the context of the overall (gross) financial flow into cultural and creative industries in Australia, estimated to be between \$150.5 billion and \$268.28 billion⁶ in 2021-22. Copyright revenue is therefore estimated to be between 0.29% and 0.52% of the total financial flows. In the comparison year, 2017-2018, the total financial flow into the cultural and creative industries is estimated at between \$131.87 billion and \$237.46 billion and copyright revenue is similarly estimated as being between 0.29% and 0.52% of the total financial flows. The overall growth of financial flows into the cultural and creative industries was 13%-14% across four years.

While the role copyright income plays in the overall financial inflows to cultural and creative industries is modest, it is important to note that copyright as a concept and operating environment underpins many of the other financial inflows. The importance of this nuance for copyright enforcement is twofold.

Firstly, it is clear that the purpose of copyright enforcement is complex, and is both protective and incentive-creating as well as a direct income collection mechanism. Copyright enforcement has a protective/deterrent effect - to protect the creators of, and investors in, original work from copycats - thus creating an environment where creators can have some confidence that their moral rights will be upheld, and where both creators and investors have some confidence that they will be able to recoup costs and generate economic benefit. Many of the other financial flows into the cultural and creative industries rely on an environment of effective copyright enforcement, even though these income streams are not directly identified as copyright-derived income. Examples of this include box office or production fees for films; production fees linked to broadcast/streaming rights for television; user download sales from games; an author being able to sell the various rights vested in a novel (eg. screen rights, translation rights, audio rights) or; a publisher negotiating a licensing fee with an educational institution.

Secondly, while direct copyright revenue may be a small part of the overall financial inflow for cultural and creative industries, it may be a more significant element within some sub-sectors and, over time, larger than the original, commissioned fees for some content producers.

Given this complexity, we recommend the Copyright Enforcement review explore whether direct copyright revenue plays a more significant role for income within particular sub-sectors to assist in best focusing administrative and enforcement efforts.

Public perceptions and participation

Despite cultural and creative activity being a significant part of Australia's economy, ANA research suggests middle Australians have a rudimentary understanding of how cultural and creative industries drive economic activity. During focus group studies for our three-year, national study on middle Australia, participants were confident and articulate in describing the cultural and social benefits of arts and culture in their own lives and communities. In contrast, while they were adamant that arts and culture made an economic contribution, and could describe some of these contributions, they were less clear about 'how it all works'.

ANA's research with middle Australia focused on people from the outer suburbs and regional and remote Australia from low to middle income households who don't work in art and culture. These focus groups suggest that everyday Australians have a limited exposure to, and understanding of, the business models underpinning the creative and cultural industries, including the role of copyright. Nonetheless, at a values level, there is evidence of support for and understanding of how copyright operates as an income stream and protector of rights. In focus groups with middle Australians, copyright laws were seen to benefit society by encouraging and incentivising the creation of new ideas and innovations, while also providing a means for creators to generate income and support themselves and their work. These are ideas that middle Australians value and support:

Yeah I think things like copyright and freedom of expression and all those things that enable art and culture, I think they're important. Arts won't survive if we don't support them, pay for what we use. - (FEMALE, NSW, 35-60)

Having Australian content fosters a self-sustaining industry. If we don't support it, and we import everything, we can't hear our own music on the radio; our artists can't make any money, so they can't do any more art. If there are some kind of protections in place, at least they can then have a chance to do the work. (MALE, VIC, 35-60)

A lot of people probably think arts is just, you know, painting...but it is also making solutions too, but creatively...like, if you look at intellectual rights, with firms, they've actually created their own things that they can put a patent on, but that is art, just they've put a restriction or a block on it, so they can start up their business. (MALE, NSW, 18-29)

More broadly, the focus groups found:

- Middle Australians appreciate arts and culture's ability to help people express themselves, express new or difficult ideas, and express their culture to others,
- They value the ways that creative expression allows Australian culture and heritage to continue to evolve, just as our society, tastes, preferences and values have continued to evolve

These views from middle Australians showing they value arts, culture and creativity reflect the broader context of Australia; we are a culturally active nation, with high rates of cultural attendance⁷ and growing rates of cultural participation⁸; people support Australian content⁹; and believe creators should be compensated for their work¹⁰.

While this review is focused on the copyright system, these views from middle Australia and the participation data from Australia more broadly, suggests that ongoing work to build wider public understanding of the concepts of copyright and intellectual property and how they apply in this country will be relevant to the public as both creators and consumers of copyright material.

How to start the conversation?

The Australian Curriculum, managed by the Australian Curriculum, Assessment and Reporting Authority (ACARA), “sets the expectations for what all young Australians should be taught, regardless of where they live in Australia or their background.”¹¹

This includes the expectation that Australian secondary students should finish compulsory schooling (Foundation – Year 10) with some basic knowledge about copyright and how to behave ethically. The national curriculum includes general capabilities designed to equip students for life and work in contemporary Australia. An Ethical Understanding capability stream helps “students develop the capacity to understand and apply ethical and socially responsible principles when collaborating with others and creating, sharing and using technologies. They build understandings and ethical behaviours regarding privacy and intellectual property rights, such as copyright.”¹²

Students are said to develop an understanding “about the protection of data, intellectual property and individual privacy within the school environment” to help them navigate the real-world experience.

Is this educational focus sufficient when technology and what it enables creators to produce is moving at a rapid pace?

Some countries, such as South Korea, have invested significant resources in ensuring students are educated on copyright at school and through adulthood, with a clear focus on economic potential.

Central to its copyright push are education and public awareness programs – overseen by the Korea Copyright Commission (KCC) founded in 2009 – designed to raise awareness of the importance of copyright, as well as a suite of policy measures.¹³

In 2020, South Korea's Ministry of Culture, Sports and Tourism, which oversees copyright policy, announced a ‘Copyright Vision 2030’ initiative, designed to help the nation become a ‘copyright power where culture becomes the economic power’.¹⁴ It sees emerging technologies like AI, blockchain and big data as the Fourth Industrial revolution.

Copyright Vision 2030 builds on the KCC’s long-term education and community awareness campaign, which includes:

- Copyright classes as part of the regular curriculum
- Customised school copyright workshops by request
- Online copyright programs for students
- Targeted textbooks for youth audiences
- Customised adult education programs (including for creators)
- Improved training for copyright educators
- Specialised University courses for talented young creatives
- A program that provides copyright education for minor infringements
- Enhanced skills training for copyright professionals
- Remote copyright training for teachers
- Online courses for industrial workers
- Educational opportunities for forensic cybercrime experts

Not all Australians need to become copyright experts but efforts to improve awareness and education will allow for more productive public engagement on copyright over coming decades and amid a continuing evolution in technology.

Conclusion

The digital revolution has changed the way we live in the 21st Century. Digital consumption and creation is embedded into daily life for most Australians. With this growth in content creation in everyday lives, issues like copyright and intellectual property rights have followed.

With a wide-ranging examination of cultural policy now underway for Australian creators and audiences, the sizeable impact of the digital transformation on the community at large makes the copyright enforcement review a useful juncture to ask whether our current copyright system is working effectively for the whole community.

To be an insightful discussion, it requires an informed public. It's clear we can do more to build understanding amongst the general public about these issues and opportunities.

What we do know is:

- Copyright protections incentivise and reward creators to create
- Forthcoming ANA research estimates copyright revenue for 2021-22 at more than \$782 million, an increase of more than 14 per cent since 2017-18
- Direct copyright revenue makes a relatively small contribution of less than one per cent to the overall financial inflow for the cultural and creative industries, however an effective copyright system underpins many of the other forms of financial inflow.
- Copyright revenue may also be a larger share within particular subsectors.
- Everyday Australians have a rudimentary understanding of how cultural and creative industries drive economic activity
- Nonetheless, they support an environment which enables the production of Australian content and believe creators should be compensated for their work

While this current review focuses primarily on creators and right holders, our research from middle Australia and, more broadly, our culturally active community, suggests the growing cohort of copyright consumers and creators would benefit from a systematic approach to building awareness and broad understanding among the general population of the concepts of copyright and intellectual property and how they apply in Australia. Fellow OECD nation South Korea has demonstrated it is possible to educate a population on copyright through consistent resourcing and embedded programs.

Recommendations

To facilitate a fit-for-purpose copyright enforcement environment in Australia, ANA recommends:

1. To strengthen the operating environment of cultural and creative industries, proceed with the bipartisan proposal for a Productivity Commission inquiry 'into the legislative arrangements which govern funding of artistic programs and activities at all levels of government'.¹⁵
2. As part of the Copyright Enforcement review 2023-23, explore whether copyright plays a more significant role in income within particular sub-sectors to assist in best focusing administrative and enforcement efforts.
3. Following the Copyright Enforcement Review, explore options for strengthening the copyright-focused elements of the Australian Curriculum to improve broad public understanding of the role copyright plays in their own lives (with regard to creation and use of copyright material) as well as the role of copyright-based industries in diversifying and strengthening Australia's economy.

With the digital revolution showing no signs of abating, the need for knowledgeable Australian copyright consumers and creators will only continue to grow. They can play an important role in our future knowledge economy – but an enduring, financially beneficial and effective copyright system relies on an informed Australian public.

Endnotes

1 Recommendation 2 of the 2021 parliamentary inquiry into Australia's creative and cultural industries. It recommended "the Commonwealth Government direct the Productivity Commission to inquire into the legislative arrangements which govern funding of artistic programs and activities at all levels of government. The Productivity Commission should consider barriers and opportunities for artistic programs to be established at the different levels of government". Commonwealth of Australia. "Sculpting a National Cultural Plan," 2021.

2 Simon Kemp, "Digital 2023: Australia", Datareportal, 9 February 2023, <https://datareportal.com/reports/digital-2023-australia>

3 World Intellectual Property Organization (WIPO). 2016. "Understanding Copyright and Related Rights (2nd Ed.)." Switzerland: World Intellectual Property Organization. http://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf.

4 If including international services revenue, the amount for the 2021-22 financial year is estimated at more than \$847.39 million. These various estimates are based on analysis for ANA's forthcoming report which seeks to map and quantify all investment in arts and culture, due for release in May 2023. The estimates have not yet been the subject of quality checks and are based on an analysis of public sources of information including the financial statements of five of the six collecting societies mandated by the Code of Conduct with annual reports publicly available on each collecting societies' website. The included collecting societies are: Copyright Agency, Screenrights, Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA-AMCOS), the Phonographic Performance Company of Australia (PPCA), and Australian Screen Directors Authorship Collecting Society (ASDACS). Additionally, it is worth highlighting for the purpose of analysing the copyright income in the context of ANA's forthcoming research, we have only included the gross revenue relating to rendering services such as 'collecting' as reported by the included Collecting Societies in financial statements. However, the cultural and creative industries definition used by ANA in this broader research is informed by the definitions used in the various data sources, including the 'Cultural and Creative Activity Satellite Accounts' which are based on the Australian and New Zealand Standard Industrial Classification (ANZSIC) codes. Several of the industry groupings, such as 'Broadcasting, electronic or digital media, and film', 'Literature and print media', 'Music composition and publishing', and 'Visual arts and crafts' are connected to the broader copyright industry, whilst other groupings such as 'Environmental heritage' are not typically connected. Further, the World Intellectual Property Organisation (WIPO) definition of 'copyright industries' includes a different combination of the industry groupings and considers each according to whether they are core, partial, dedicated and non-dedicated. To understand the economic contribution of Australia's copyright industries according to the WIPO definition, see the research series supported by the Australian Copyright Council, most recently "The Economic Contribution of Australia's Copyright Industries - 2006-2018." PwC, June 2020. https://www.wipo.int/export/sites/www/copyright/en/performance/pdf/pwc_report_2020_australia.pdf)

5 If including international services revenue, the amount for the 2017-2018 financial year is estimated as more than \$731.27 million.

Endnotes continued

6 These figures are preliminary estimates including a broad range of financial flows into the cultural and creative industries. The estimates are based on analysis of several datasets, along with financial statements of Collecting Societies the datasets include the Australian Industry, 2020-21 dataset published by Australian Bureau of Statistics (ABS), and the Australian Charities Reports published by the Australian Charities and Not-for-profits Commission (ACNC). The estimate includes a low and high estimate due to cultural and creative specific ANZSIC industry data being aggregated with other industries in some parts. We additionally note that there are possible overlaps across datasets, for example a percentage of copyright revenue may also be included in datasets that include aggregated figures for goods and services income. A fulsome explanation of the methodology adopted by ANA to arrive at these and other figures on income and investment in arts and culture will be included in the forthcoming report.

7 Australian Bureau of Statistics. 2019. "4114.0 - Attendance at Selected Cultural Venues and Events, Australia, 2017-18." Canberra: Australian Bureau of Statistics. <https://www.abs.gov.au/statistics/people/people-and-communities/attendance-selected-cultural-venues-and-events-australia/2017-18>

8 Australian Bureau of Statistics. 2019. "Participation in Selected Cultural Activities 2017-18 Dataset." Canberra: Australian Bureau of Statistics. <https://www.abs.gov.au/statistics/people/people-and-communities/participation-selected-cultural-activities/latest-release>

9 A New Approach (ANA), Twenty-first century priorities for Australian arts and culture policy: What's new, what's endured, what's next? (Canberra: Produced by A New Approach (ANA), 2021), 20, https://newapproach.org.au/wp-content/uploads/2021/10/ANA-Priorities-Paper_FA_Acc.pdf

10 A New Approach (ANA), Twenty-first century priorities for Australian arts and culture policy: What's new, what's endured, what's next? (Canberra: Produced by A New Approach (ANA), 2021), 20, https://newapproach.org.au/wp-content/uploads/2021/10/ANA-Priorities-Paper_FA_Acc.pdf

11 <https://www.australiancurriculum.edu.au/about-the-australian-curriculum/> (accessed 28/02/23)

12 Australian Curriculum website, <https://www.australiancurriculum.edu.au/resources/curriculum-connections/dimensions/?id=64623&searchTerm=copyright#dimension-content> (21/02/23)

13 2021 Annual Report on Copyright in Korea, <https://www.copyright.or.kr/master/file/displayPdf.do?fileNo=29903> (Accessed 22/02/23)

14 2020 Annual Report on Copyright in Korea, <https://www.copyright.or.kr/master/file/displayPdf.do?fileNo=27365> (Accessed 22/02/23)

15 Recommendation 2 of the 2021 parliamentary inquiry into Australia's creative and cultural industries. It recommended "the Commonwealth Government direct the Productivity Commission to inquire into the legislative arrangements which govern funding of artistic programs and activities at all levels of government. The Productivity Commission should consider barriers and opportunities for artistic programs to be established at the different levels of government". Commonwealth of Australia. "Sculpting a National Cultural Plan," 2021.