

27 September 1999

Mr Margus Karilaid  
Senior Research Officer  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra

Dear Mr Karilaid

As the Director of the Australia Council's Aboriginal and Torres Strait Islander Arts Board, I am writing to provide you with an overview of the submission I will be making to the House of Representatives Standing Committee on the Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright on Tuesday 5 October 1999.

The Australia Council is the Federal Government's principal arts funding and advisory body. It aims to enrich the life of the nation by supporting and promoting the arts (for detailed information please see our website [www.ozco.gov.au](http://www.ozco.gov.au)).

The Council recognises the fundamental role of the Aboriginal and Torres Strait Islander Arts Board as the leading authority in Aboriginal and Torres Strait Islander arts, and actively promotes the unique Aboriginal and Torres Strait Islander cultures as integral to Australia's national identity.

The Board assists Aboriginal and Torres Strait Islander people to claim, control and enhance their cultural inheritance. The Board supports this right through its grant categories and through the implementation of the National Aboriginal and Torres Strait Islander Arts Policy (for details check [www.ozco.gov.au/whatwedo/policies.htm](http://www.ozco.gov.au/whatwedo/policies.htm)). One of the twelve priorities for the policy is Copyright, Intellectual Property and Moral Rights.

The Australian Copyright Council (ACC) has prepared a briefing paper for the Australia Council which details concerns with the revised Bill. (The ACC has also made its own submission to the inquiry). This new legislation recognises the need to strike a fair balance between the rights of copyright owners and copyright users. The introduction of a 'right of communication to the public', technological protection measures and rights management information are also positive advances, in principle.

However, there are still several issues of concern including:

- Over a period of years there has been strong evidence of appropriation of traditional imagery and design.
- Copyright users do not always respect the legally established rights of Indigenous artists.
- Internet and on-line communications seem to be accelerating the unlicensed and inappropriate use of Indigenous cultural materials as service providers use Aboriginal and Torres Strait Islander art and design to identify themselves and attract customers in the global market.

- The ability to enforce copyright under copyright law is paramount especially for holders of rights with little means - Indigenous artists and communities are prime examples.
- Compliance with the requirement to make payments to collecting societies has not been uniform in Australia. There has also been widespread discussion in the arts community about public and private arts organisations, including galleries and museums, not making the contributions artists feel they should be making.

On behalf of the Aboriginal and Torres Strait Islander Arts Board, I will outline the following recommendations to the Committee:

- There is a need for greater protection of Indigenous heritage, particularly in relation to communal rights, and the protection of secret and sacred material.
- Indigenous people need to be informed about how existing cultural heritage laws might benefit their needs regarding the use and control of their Indigenous cultural heritage material.
- Support should be given to the national certification mark - the Label of Authenticity - for Aboriginal and Torres Strait art and cultural products. The label and a series of derivative marks which allow for local, regional and state differences should be registered under the Trademarks Act.
- The Copyright Act should have stronger deterrence/penalty provisions with further community and industry awareness of same.
- The Copyright Act should have further remedies of apology, statutory recognition of damage for cultural harm, provisions for compulsory education processes and plaintiff/defendant meeting provisions similar to victims and offenders procedures.
- The fiduciary obligations of custodians and the equitable rights of the beneficiary members of custodian's clans should be recognised in statute.
- The Copyright Act should be amended to allow copyright owners access to other remedies, for example: right of retraction; letters of apology and right of copyright owner to explain cultural significance of work and infringement on culture.
- Access to fast-track and low-cost tribunals: arbitration and mediation attached to Federal Court which include a list of expert lawyers to deal with matters outside court.

If you have any questions regarding the above please contact me on (02) 9950 9065 or email me (f.nelson@ozco.gov.au).

Yours faithfully

Fay Nelson  
Director  
Aboriginal and Torres Strait Islander Arts Board