

14 November 2012

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Powerhouse Museum's response to:

Copyright and the digital economy: submission in respect of questions 19, 20, 21, 22, 23, 24, 45 and 52.

The Powerhouse Museum, a significant Australian museum, has a distinct collection covering history, science, technology, design, industry, decorative arts, music, transport and space exploration. The Museum has been making access to its collection a priority and engaging audiences with contemporary technologies to showcase Australian innovation in the creative industries, developments in science and ecologically sustainable technologies. We have a responsibility to provide access to our collections especially for the education sector so that we can enable learning, research and innovation to occur. Technology has profoundly changed the way that audiences are accessing and using our content today and we need the Copyright Act to reflect what our audiences are seeking from us.

The current status of Copyright law is not flexible enough for collecting institutions, such as the Powerhouse Museum, to fulfil their missions. Current exceptions for libraries and archives really only refer to digitisation and for the purposes of collection management. In the current digital economy and with our audiences expecting to have access to our content and to be able to use them the Copyright Act does not allow us to have certainty for making our collections available to the public, especially online. There is also no specific provision for museums, galleries and cultural institutions.

The collections of museums and galleries are diverse and have a range of complex Copyright issues that need to be dealt with on a daily basis. Most institutions don't have access to legal services and need to spend many hours finding Copyright holders and negotiating license agreements. Institutions have to deal with orphan works, works in the public domain, works in Copyright and works where the rights holder is not clear, and if resourced, will have one officer to deal with this. This is not a sustainable model to make our collections accessible to a broader audience in the digital economy.

We have many examples of our audience using our ‘no known copyright restriction’ content, uploaded to the Flickr Commons, in innovative ways whilst adding to the knowledge of these collections through tagging, comments, research and location identification. We have developed important partnerships with other organisations by having this content freely available online. We believe that this could extend to our content that is under Copyright and see the same level of innovation, citizen research and education occur with the whole collection. To only allow this level of access to our out of Copyright works is skewing our collection and not representing it in its entirety.

We believe in a balanced approach to handling Copyright issues that are technology neutral, but need more flexibility with the provisions in the Copyright Act 1968, to enable the broader reach, engagement, open access to and use of our collections in the current digital economy. This would encourage education and innovation using the content created by cultural heritage collections and we support the principles for reform in the review of the Copyright Act, 1968. Our use of content would continue to involve consideration of the impact the activity might have on the right holder’s potential commercial market and would be concerned that a purpose-based exception could exclude engagement with our online communities through our social media platforms, our blogs and on our website.

Libraries, archives and digitisation

Question 19.

What kinds of practices occurring in the digital environment are being impeded by the current libraries and archives exceptions?

Museums and galleries need to be more specifically mentioned in the Copyright Act with allowances for mass digitisation of cultural heritage collections, not only to be uploaded into collection management systems but to be made available for open access and use online. We need to effectively manage our archives to the best possible standards so that they will be available for future generations and this does involve multiple copies to allow for proper digital preservation.

Museums and galleries need to maintain digital archives and the Copyright Act is prohibiting us to do this effectively. There should be a fair use approach in relation to providing access to our collections online for non-commercial use. Audiences want to use and innovate with our content via many forms; one being through the use of an API (Application Programming Interface) and they are currently not allowed to access images that are under Copyright. To promote innovation in the sector we need more flexibility in the Act particularly as technology is rapidly developing and changing.

Mass digitisation of our collections should be permitted and that the results of this activity made available to the public as stated by the ‘Government 2.0 Taskforce’ promoting the open release of government and public sector

information. We need to ensure that future uses of our digital collections are not going to be impeded by exceptions that we set now for in the fast pace of changing technology and social media platforms.

Question 20.

Is s 200AB of the Copyright Act 1968 (Cth) working adequately and appropriately for libraries and archives in Australia? If not, what are the problems with its current operation?

S200AB of the Copyright Act 1968 is problematic for cultural heritage institutions for a number of reasons. We have not applied this provision to any of our collections because of the complex nature of trying to interpret it and the risks associated with doing this incorrectly. We feel this is a cumbersome and uncertain act that requires an in-house lawyer to provide us with an in depth analysis of how we could use it. We don't have access to legal services on a daily basis so interpreting this provision is a problem. We would like to see s200AB abolished and replaced with broader fair use, or a fair dealing right for libraries, archives, galleries and museums.

Question 21.

Should the Copyright Act 1968 (Cth) be amended to allow greater digitisation and communication of works by public and cultural institutions? If so, what amendments are needed?

Yes, we believe the Copyright Act 1968 should be amended to allow greater digitisation and communication of works by cultural institutions such as the Powerhouse Museum. As we move towards a stronger digital economy there is a call from Government, and the public, to make our collections available online. It is in the mission statements of cultural heritage collecting institutions to make their collections accessible, including online.

The public expects to have access to our images online whether this is in their homes, at work, at school and in our galleries. A catalogue record without visual reference is considered incomplete and hinders research and knowledge sharing. All our exhibitions are accompanied by a dedicated website with material complementary to the physical display. Such websites provide valuable educational material; encourage further research and community involvement. They are created for strictly non-commercial purposes and combine curatorial research and reproductions of collection items. Museum should be able to create educational material related to its collection and exhibitions.

The roll out of the National Broadband Network will promote the quick access and use of content provided by cultural heritage organisations to promote the educational use of our content that will lead to better education for communities in remote areas and to promote innovation and research. The Copyright Act should reflect the need for institutions to make content freely available that is inline with the current technology and audience needs whilst also bearing in mind the fast pace of technology developments.

Question 22.

What copyright issues may arise from the digitisation of Indigenous works by libraries and archives?

The complex communal ownership of many Indigenous works can make it difficult to establish copyright owners to then negotiate a license. There are moral rights, such as the right to attribution and the right to not have a work published or treated in a derogatory way due to communal creation process, ownership and specific requirements regarding cultural integrity in reproductions of Indigenous cultural material. The Powerhouse Museum will continue its sensitive approach to the digitisation of Indigenous works in its collection pending the outcome of this review.

Orphan works

Question 23.

How does the legal treatment of orphan works affect the use, access to and dissemination of copyright works in Australia?

A large proportion of items in the collection held by the Powerhouse Museum are considered orphan works. An number of examples include: photographs, photographs without a record of the photographer, political posters, commissioned works without details regarding copyright arrangement, scrapbooks, trade catalogues of business that ceased to exist many years ago, drawings of architects who were active for a very short period of time and now are untraceable. Due to the risks of legal sanctions we are cautious about the use of these works and will decide more often not to use them.

The Powerhouse Museum is committed to making sure that our collection is accessible and allowing orphan works to be viewed and reproduced would allow the Museum to fulfil its mission whilst also contributing to public research, propagating knowledge and education, culture and creativity.

Question 24.

Should the Copyright Act 1968 (Cth) be amended to create a new exception or collective licensing scheme for use of orphan works? How should such an exception or collective licensing scheme be framed?

The Powerhouse Museum believes that a new exception should be implemented rather than a collective licensing scheme. The Powerhouse Museum is opposed to handing over the rights of orphan works to collecting societies as the likelihood of copyright owners coming forward is low and collecting fees for using unclaimed orphan works for non-commercial use goes against our mission of access. In an era of smaller budgets and limited resources it would be detrimental to our organisation to pay to use orphan works and we find this an unnecessary option for orphan works.

We wish to make orphan works in our collection available for non-commercial purposes that will bring benefit to the education sector and the public as a whole without them having to pay a fee to use such works. We believe fair use would provide the appropriate balance between rights holders, cultural institutions and the wider public to have access to and engage with the information and culture held within our organisation.

Fair dealing exceptions

Question 45.

The Copyright Act 1968 (Cth) provides fair dealing exceptions for the purposes of:

- (a) research or study;*
- (b) criticism or review;*
- (c) parody or satire;*
- (d) reporting news; and*
- (e) a legal practitioner, registered patent attorney or registered trade marks attorney giving professional advice.*

What problems, if any, are there with any of these fair dealing exceptions in the digital environment?

The Powerhouse Museum supports a broad flexible exception to the use of copyright material but feel that the current provisions are not broad enough for an effective balance between owners and users in the current digital climate. Students that use our content, for example, are encouraged to share their work further in the digital environment but the private research and study provision doesn't allow for this.


Fair Use

Question 52.

Should the Copyright Act 1968 (Cth) be amended to include abroad, flexible exception? If so, how should this exception be framed? For example, should such an exception be based on 'fairness', 'reasonableness' or something else?

The Powerhouse Museum would support a broad, flexible exception that is more inline with the US style fair use approach. We would like to see S200AB abolished and replaced with fair use.

Yours sincerely



Dr Dawn Casey PSM FAHA
Director