



Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
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Dear Ms Wynn

AMPAG would like to thank you for the opportunity to respond to the Australian Law Reform Commission's inquiry into copyright. It is an issue that lies at the very heart of AMPAG's member companies.

The ALRC recommendations to replace the existing exceptions in the Copyright Act with an open-ended fair use exception and to abolish the education and government statutory licences, replacing them with voluntary licensing, is not supported by AMPAG.

Copyright is important to creators as a means of both income and artistic control. By proposing a broad fair use exception and the abolition of statutory licences, the ALRC risks diminishing both a creator's income and the means of controlling use of their work. Such reforms if adopted will undermine Australia's commitment to strengthening the creative industries sector as a 21st century economic driver.

AMPAG stated in its submission to **Copyright and the Digital Economy** on 30 November 2012 that any change to copyright laws should be backed by clear policy intent that fully considers the needs and rights of the owners of creative content and the moral rights of the artist. We believe the ALRC's recommendations to remove the statutory licences introduces uncertainty and reduces the copyright owner's ability to efficiently and effectively receive fair remuneration from the use of their copyright content.

AMPAG submitted in response to the 2012 ALRC issues paper that the major performing arts companies provide subsidised performing arts education programs, community workshops and performances to Australian audiences. These activities underpin their dedication to broadening access and participation in the performing arts across the Australian community. While much is voluntarily given away or subsidised, education institutions and students are charged for performances and other forms of content at the discretion of the company as rights holder. Often this is accompanied by freely distributed support material. Where direct contact is not made via performance, company website or education visits but resources are accessed and incorporated into activities by third parties, a financial contribution from such use is both fair and a valued additional support for the ongoing sustainability of the work our companies do. Returns are reinvested in the creation of new works and/or distributed to other associated creators, which contributes to the level of earned income of the artist and the performing arts company.

Though modest, the major performing arts companies value the payments received through the statutory licence schemes administered by Screenrights and CAL. This area of third party copyright use collection is one that the not-for-profit performing arts companies are ill-equipped to pursue independently. The resources required for individual companies to monitor and negotiate use on a case-by-case basis would dwarf any likely returns from such use.

The major performing arts companies are also committed to the ongoing extension and development of excellence in arts practice and art forms. AMPAG companies created 208 new Australian works in 2012, they also multicasted a selection of theatre performances, broadcast on radio to over 8 million listeners, incorporated audio visual content into their live performances, created educational literature and other education digital resources and audio visual products for commercial sale. Copyright in these works is licensed for use or is owned by the performing arts companies.

We have a strong interest in the copyright environment being effective and efficient for both users of copyright and copyright owners. Removing explicit reference to copyright exemption leaves the complexities and ambiguities of what is 'fair use' to be worked out either through costly litigation or commercial negotiations. It places the onus on copyright owners to prove use was unfair—in practice not-for-profit performing arts companies would be severely limited and reluctant to enter into expensive legal challenges pursuing an argument that turns on the untested term 'fair use'. We are concerned that it may complicate or introduce uncertainty both as end users of third party copyright material and in our efforts to protect our own rights and that of our contracted artists.

All the major performing arts companies receive a valuable base funding subsidy through the triennial agreements between state and federal governments and the individual companies. They are also tasked to continue to develop other avenues for income. The ALRC recommendations narrow the rights and the practical ability to exercise the rights of copyright holders to be remunerated for use of their works. They limit the potential of companies to earn income in this area, which means they are less able to alleviate pressure for income from other areas such as government subsidy.

The statutory licence framework is an efficient system that monitors use and negotiates a blanket scheme ensuring any returns really can go to the creators and will not be offset by the expense of individual companies needing to monitor and enforce their rights.

Performing arts companies and artists have also been supported via the Copyright Agency (CAL) Cultural fund. This year Black Swan State Theatre Company (BSSTC) received funding support from CAL enabling the company to fund three of its emerging writers to attend the National Playwrights' festival. The writers continue to work on original pieces throughout 2013 with a staged reading planned at the end of the year. Black Swan continues to support and nurture the process with BSSTC's Literary Manager leading the group and the company will have the option of commissioning the strongest and most promising work. Returns from licence fees are directly enabling emerging writers to develop their craft and produce new Australian works. This year the CAL fund also committed \$20,000 a year for three years to Inscription, to establish a Fulbright Scholarship for an established playwright to spend four months developing a play and building professional networks in New York. Initiatives such as the Cultural Fund directly support artists and their ongoing creation of work. They are made possible because of the efficiency of scale that the statutory license system brings to the copyright use monitoring and collection process.

The current environment provides a level of clarity and certainty in relation to use exemptions. It also provides clarity for our own use of material for review, research and clearance when incorporating other artists' works into our own content offerings. The introduction of a 'fair use' term without definition would necessitate performing arts companies demonstrating at law where an infringement on copyright has taken place in instances when a user applies fair use as a defence. Not-for-profit performing arts companies are not resourced to defend such cases and therefore contend that the ALRC recommendations disadvantage owners of copyright such as performers, composers, writers, directors, designers and not-for-profit performing arts companies.

Who we are

AMPAG, established in 1999, is the peak body for Australia's major performing arts companies and by default for the wider cross section of the subsidized small to medium not for profit performing arts industry. Our core membership comprises 28 not-for-profit companies ranging in size from Opera Australia and the Sydney Symphony Orchestra to mid-sized companies like Australian Chamber Orchestra and Queensland Theatre Company and smaller ones such as the West Australian Ballet and State Theatre Company of SA—see Appendix.

For further information contact:

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Appendix: AMPAG member companies and their location

Adelaide Symphony Orchestra	South Australia
Australian Brandenburg Orchestra	New South Wales
Australian Chamber Orchestra	New South Wales
Bangarra Dance Theatre	New South Wales
Bell Shakespeare	New South Wales
Belvoir	New South Wales
Black Swan State Theatre Company	Western Australia
Circus Oz	Victoria
Malthouse Theatre	Victoria
Melbourne Symphony Orchestra	Victoria
Melbourne Theatre Company	Victoria
Musica Viva Australia	New South Wales
Opera Australia	New South Wales
Opera Queensland	Queensland
Orchestra Victoria	Victoria
Queensland Ballet	Queensland
Queensland Symphony Orchestra	Queensland
Queensland Theatre Company	Queensland
State Opera South Australia	South Australia
State Theatre Company of South Australia	South Australia
Sydney Dance Company	New South Wales
Sydney Symphony	New South Wales
Sydney Theatre Company	New South Wales
The Australian Ballet	Victoria
Tasmanian Symphony Orchestra	Tasmania
Western Australian Ballet	Western Australia
West Australian Opera	Western Australia
West Australian Symphony Orchestra	Western Australia