



SUBMISSION TO THE ATTORNEY GENERAL'S DEPARTMENT ON THE  
AUSTRALIAN LAW REFORM COMMISSION DRAFT TERMS OF  
REFERENCE ON COPYRIGHT.

SUBMITTED BY THE AUSTRALIAN DIRECTORS GUILD.

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## ABOUT THE AUSTRALIAN DIRECTORS GUILD (ADG)

This submission is made by the Australian Directors Guild (ADG), the industry association representing the interests of film and television directors, writer/directors, documentary filmmakers, animators and independent producers throughout Australia. Formed in 1980, the ADG has 500 full members nationally.

The ADG works to promote excellence in screen direction, to encourage communication and collaboration between directors and others in the industry, and to provide professional support for its members. It maintains a high profile and leading cultural and policy role through its efforts to address issues affecting the industry from a broad perspective.

The ADG is affiliated through the International Affiliation of English-Speaking Directors Organisations (IAESDO) with the Broadcasting, Entertainment Cinematograph and Theatre Union (BECTU), the Directors Guild of America (DGA), the Directors Guild of Canada (DGC), Directors UK, the Screen Directors Guild of Ireland (SDGI) and the Screen Directors Guild of New Zealand (SDGNZ). It is also a member of the Copyright Council and the Australian Coalition for Cultural Diversity (ACCD).

## **PRE-AMBLE**

As a member of the Australian Copyright Council we would like to endorse the comments by the Council on their submission on the terms of reference. In particular the following key points:

- Copyright material is made by creators;
- Copyright must balance the rights, interests and expectations of both copyright creators and users;
- One should avoid an assumption that extending exceptions will necessarily enhance innovation;
- The terms of reference should be technologically neutral.

## **BACKGROUND**

On 19 December 2005, in response to sustained lobbying from directors, and with the support of other concerned interest groups, the Government enacted the *Copyright Amendment (Film Directors Rights) Act 2005* (Cth) (Act). The Act provided directors with a limited right to be joint copyright owners (together with producers) of the programs they direct when these programs are retransmitted from free-to-air to cable channels.

The objectives of the Act included:

- addressing concerns about the level of recognition available to directors in Australia;
- providing appropriate copyright recognition for the creative contribution of directors;
- enabling directors to share in the new income stream provided by the Part VC retransmission scheme, in recognition of their creative contribution to the film-making process.

The Act provided directors with a limited symbolic recognition of their creative contribution to the film making process. It was also to provide on-going remuneration to directors to help sustain their creative careers.

Unfortunately the change in the legislation has not succeeded in changing industry practice so that directors may share in retransmission royalties.

Current industry practice dictates that directors assign all their rights (including any right to receive retransmission secondary use) to broadcasters and production companies. This has been able to occur because of an overly broad interpretation of the meaning of “commissioned film” within the legislation and a refusal by producers and broadcaster to allow directors to include a clause in their contracts in which they reserve their rights to their share of retransmission royalties.

## **ON THE DRAFT TERMS OF REFERENCE**

Our director's experience of copyright law improving their earnings in the digital environment has been limited. The ADG's concern is that the future protection of director's copyright will be as ineffective as the past. The ALRC terms of reference should take into account the failure of copyright legislation to deliver the desired outcomes of promoting innovation and creation.

We believe that the future of the digital economy will be dependent on the delivery of effective streams of income for creators through a Compulsory Licensing scheme for the distribution of digital copies of Works and Subject Matter other than Works, as well as copyright protection for creators. The balance between the "rights of creators and the rights, interests and expectations of users and the public" must be carefully managed and take into account the Convergence Review and the Cultural Policy which will be released shortly. The content creators are the primary concern of the ADG and we urge consideration be given for the effective application of copyright law for their benefit.

We are concerned that further exceptions outlined in the terms of reference are too open ended and do not take into account the way technology is outstripping legislative change. Social networking is too open and does not take into account the "monetising" that is developing and encouraged by companies such as Google. Exceptions in this area are fraught with danger.

In regards to the *Scope of Reference* we hope that the ALRC will also take into account the Cultural Policy that will be delivered shortly. This, in parallel with the Convergence Review will be the best guide for any developments in this area.

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