

Submissions to MBIE for review of the Copyright Act by Artistic Licence.

My name is Caroline Stone and I am writing this on behalf of Artistic Licence, an organization that I am in the process of setting up to fill the gap in Collective Rights Management Organizations for visual artists in Aotearoa. Aside from the services that I am aiming to provide there is currently no CMO activity for the visual arts in New Zealand, although Copyright Agency I Viscopy does provide collective rights services to New Zealand visual artists for works licensed in Australia and internationally. I am currently in commercial negotiations with Copyright Licensing NZ to expand their offering of licensing services from their current authors to include visual artists as we believe this will mean a more efficient cost effective service can be provided to the artists, as honestly trying to set up a CMO without any resources is fairly difficult. As we are still in the negotiation stage, this information is confidential and provided solely for the purposes of MBIE for this stage of the Copyright Act review, though we hope to make a Public Announcement within the next few months.

Due to our limited resources I am restricting my submissions to the issues identified by MBIE that I believe had particular relevance to visual artists, and am including feedback from my dealings with the approximately 100 artists that I have spoken to, of whom approximately 50 are already members of Artistic Licence. Our submissions are as follows:

1. (Item 1). **Are the current Copyright law objectives appropriate?** Through discussions with visual artists on this issue the feeling seemed to be that whether it was expressed as an objective, or a principle, the purpose of the Copyright Act should be to provide appropriate respect to author/ creators rights.

2. (Items 5 and 6). **Problems with the way the Copyright Act categorises works, and in particular understanding originality and “skill, judgment and labour”.**
The issues of understanding originality and its application to visual artworks can be difficult to determine, particularly when one artwork “appropriates” or develops on an earlier copyright protected work. Also with regard to photographing visual artworks, some photographers believe that due to their “skill, judgment and labour” they have created a new visual artwork which they own the copyright in, rather than making a reproduction/ copy of the visual artwork.

3. (item 8). **Copyright Ownership and the Commissioning Rule.**
There was pretty much a uniform consensus among the artists that I spoke with that “The Commissioning Rule” put artists at a disadvantage, particularly as they were less likely than others to put their contracts or agreements in writing. By having the commissioning rule apply without the “commission” needing to be in writing makes things very unclear for both artist and alleged commissioner, and can make cloud the provenance of an artwork, making it difficult to create a clear title for ownership in some cases.

4. (Item 10). **Problems with rights given to visual artists – lack of a resale royalty.**
The approximately 50 artists that have already joined Artistic Licence have all done so as they are frustrated that there is no resale royalty or means of participating in the future economic success of their artworks. These artists are aware that artists in more than 40 countries already have a resale royalty scheme including those in Australia, the UK, Singapore and many European

nations, with China and Canada also moving closer to adopting a resale royalty scheme, and possibly the United States as well. It is also interesting to note that both the UK and Australia have both had a resale royalty scheme for approximately 10 years, with very little if any overt change to the secondary market sales figures, which have continued to increase in recent years. Some specific comments by our artist members include “ *I see a resale royalty scheme as being of great benefit to artists for the simple reason that it will provide opportunities for future earnings should a young artist's profile rise over time. I believe that the benefits of a growing reputation should be shared between artist and collector alike*”

.... it may help to provide slightly more continuity to an artist's income”(E.Cooper)... “I have known a time where a gallery has resold one of my paintings that they had sold a few years earlier thus clipping the ticket on it twice – getting 45% of the original sale price plus another 45% on the higher resale price as my work had gone up in value – and me as the artist who created the piece, who owns the copyright got nothing of the resale. And in fact, has only ever received 55% (gallery having taken 45%) of the original work of art in total no matter how many times it is resold.”(I.Boot)... “As an international artist I feel that resale royalties are necessary and as the value of my art increases that I have the right to benefit from this as the creator.”(S.Cresswell)... “I would love it if there were no secondary sales of my work. Especially since I’m still creating new work and I receive no actual benefit from it.” (T. Tawhiao)... “I'd much rather see resale royalties, that's something I feel 100 times stronger about!”(AH) and “This is an opportunity for some collective advocacy for artists, it is a platform which can be built on, with artists resale royalties being the next possible issue to advocate for, and then negotiations can start around artist fees and wages. We have few legal platforms, this is a valid starting point.” (J.Darragh)

Visual Artists find it difficult to enforce (and often times understand) their existing copyrights. It is the intention of Artistic Licence to help visual artists enforce and capitalize on their existing copyright by creating a mechanism for collecting a licensing fee from third party users of their copyright protected work who often times do so without obtaining a licence – for example the auction houses and other secondary sellers who publish copies of the artwork whether in promotional catalogues, in third party media or online without obtaining a license for this purpose, and numerous publications who include images without first obtaining a licence.

5. (Item 25). Moral Rights.

These are not very well understood by visual artists.

6. (Item 57). Section 73 and Artworks placed in public spaces.

General feedback I received from artists on this point was that this should be limited so the exception applies only to personal and private use copies only, with copies made for commercial purposes excluded from the exception. There was also some concern about how this right sat along side an artist’s moral rights.

7. (Item 63). Are there sufficient CMO’s in New Zealand.

As indicated above, there is currently no CMO operating in New Zealand for visual artists. Copyright agency I Viscopy represents New Zealand artists’ works that are reproduced in

Australia, and internationally through their arrangements with other CMO's operating internationally. So far Artistic License is the only proposed CMO for visual artists in New Zealand and is very much in the initial stages of operation (as stated above. As we are still in commercial negotiations with Copyright Licensing NZ this information is confidential and provided solely for the purposes of MBIE for this stage of the Copyright Act review.) We note that NZ musicians and songwriters are well served by APRA, NZ playwrites are well represented by Playmarket, NZ authors are well represented by Copyright Licensing NZ, actors, performers and dancers are represented by Equity, but nothing for NZ visual artists. More than 80 collective rights organisations have been operating in over 60 countries around the world for visual artists in other countries for nearly 100 years now, but nothing for NZ artists. I think NZ visual artists should be very unhappy with this situation... To repeat J.Darragh :*“This is an opportunity for some collective advocacy for artists, it is a platform which can be built onand then negotiations can start around artist fees and wages. We have few legal platforms, this is a valid starting point....Artists Alliance was the only national organization providing advocacy and professional support to visual artists in New Zealand, and it has recently been forced to close up due to lack of funding.... We need grass roots industry backing for the arts sector”* and T. Tawhiao: *“this is so helpful It's a protection we don't have and are always at the mercy of being individuals without any collectivised power”*.