

Australia 2020 Submission:

8. Towards a creative Australia: the future of the arts, film and design

The Australian Digital Alliance is a non-profit coalition of public and private sector interests formed to promote balanced copyright law and provide an effective voice for a public interest perspective in the copyright debate. ADA members include universities, schools, consumer groups, galleries, museums, IT companies, scientific and other research organisations, libraries and individuals. Members are united in their support of copyright law that balances the interests of rights holders with the interests of users of copyright material.

ADA members share the belief that stronger copyright laws do not necessarily lead to greater innovation and creativity. Creative works tend to draw on earlier creative works, to “stand on the shoulders of giants”. This has been seen even more strongly with the development of participative culture on the web, and the explosion of user generated content on the internet.

In Australia, there is no exception under the Copyright Act 1968 that allows creators to take material still under copyright and use this material for pastiche or for broader transformative purposes. For example, today’s copyright laws would make it difficult for artists to produce works that draw on earlier in-copyright material, such as those produced by Andy Warhol (<http://tiny.cc/guardian388>). A local example of this is seen in Australian music group The Avalanches, who used over 900 samples to produce their debut album. The end result was unique (and acclaimed), however copyright clearance of this album took almost two years, and a high proportion of profits has gone to paying off the clearances and continuing royalty payments (<http://tiny.cc/theage333>). These kinds of hurdles led reviewers to marvel the album was ever published. Surely these kinds of hurdles are acting as a disincentive to Australians producing these types of modern creative works.

The ADA also encourages members of Australia 2020 to consider how new types of creative material can be nurtured. Sites such as Wikipedia, Facebook, MySpace, YouTube and Flickr encourage users to create, transform and share content with each other and have fostered an exponential growth of new works in a range of media.

In the US, the flexible 'fair use' defence has enabled the development of the participative web, and allowed a number of transformative uses of in-copyright works by creators in a range of media. In Australia however, a creator drawing upon in-copyright materials, both in conventional works and electronic web-based works, needs to rely on specific exceptions such as fair dealing for the purpose of parody and satire, or for criticism and review, or else risk copyright infringement.

In order to foster a creative Australia, particularly creative works that draw on, remix or otherwise transform older creative works, it is necessary for copyright law to strike an appropriate balance between protecting copyright owners and encouraging the creation of new creative works.

We recommend:

- Introduction of a flexible provision in the Copyright Act that allows creators to draw on earlier materials and use them in transformative ways to create new works.