The National Association for the Visual Arts (NAVA) Submission
re: Copyright Notice Scheme Code

The National Association for the Visual Arts (NAVA) appreciates the opportunity to comment on the Copyright Notice Scheme Code through which Internet Service Providers (ISPs) and Rights Holders will work to deter the practice of online copyright infringement.

About NAVA

NAVA is the peak body representing the professional interests of the Australian visual and media arts, craft and design sector. It is a membership organisation with around 2,500 members and 9,000 subscribers. Since its establishment in 1983, NAVA has been influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry.

NAVA provides advocacy and representation for the sector and sets industry standards. It has had a long commitment to copyright entitlements for visual creators and was responsible for the establishment in 1995 of Viscopy the visual arts copyright collecting agency for Australia. NAVA also was a vigorous advocate for the introduction of both moral rights and resale royalty rights legislation in Australia. NAVA provides professional services to its constituents through offering expert advice and referrals. Of the estimated 2,500 requests for advice received by NAVA each year, approximately 13% are about copyright.

NAVA supports the principle of the Copyright Notice Scheme Code and the need for ISPs, rights holders and the Federal Government to cooperate in reducing online infringement. The development of the Code marks an important step in supporting the legitimate content market and addressing online copyright infringement which continues to jeopardise the capacity of creators to have sustainable careers.

NAVA is dedicated to achieving the most conducive possible environment for Australian visual culture. This means ensuring the viability of artists’ careers and the sustainability of their support organisations. NAVA understands that tension at times exists between ensuring the ability of artistic creators to sustain a career in the arts and the need for community access to IP. However, for artistic creators to be able to produce creative content, their income from this activity needs protection against piracy.
Artistic Creators’ Incomes

The latest research by respected cultural economist Professor David Throsby reveals that in 2007/8 the mean income from the creative work of visual artists was $15,300 and of craft practitioners $22,000. Their mean total arts income was $23,100 and $29,800 respectively and their total income from all sources was $34,900 and $38,300 respectively. Copyright payments formed part of this income. This research indicated that 19% of visual artists and 29% of craft practitioners had received payments from a copyright collecting society in the previous 12 months, though for visual artists, royalties and advances constituted only 2% of their creative income.

While Australian research does not reveal what proportion of this income is earned from digital copyright, recent anecdotal evidence suggests that for artists it would be an increasingly important potential source of income from licensing and royalties if properly protected.

NAVA Sector Research Findings

NAVA does not condone the legitimation of people’s use of copyright material without permission and/or payment just because it is becoming a ‘social norm’ and believes the digital environment offers the opportunity for efficiencies in licensing and that these can be developed between the content creators and the communications industry including ISPs. NAVA continues to see the negative impact which unlicensed use has on our sector’s creative output and creators’ ability to earn income from their work.

In August 2014, NAVA conducted research through a survey of its constituents. 459 artists and arts industry professionals responded. 88.2% of survey respondents identified that copyright was important for artists to protect their work against use by others without their permission. The research also confirmed that 20.1% of respondents had had their copyright infringed in the digital realm at some time in the course of their professional career. In the cases of infringement only 29.3% of respondents were successful in having the infringing material taken down. 61% of respondents agreed that Internet Service Providers should take reasonable steps to prevent infringement.

Responses included:

- “Artwork & design images from my website have been used on other peoples websites.”
- “My artwork was used for advertising and on products for sale.”
- “An online magazine sourced my pictures from another website and used them without my consent.”

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1 The most recent of the regular reports is: David Throsby and Anita Zednik, ‘Do You Really Expect to Get Paid: an economic study of professional artists in Australia’ published in 2010 by the Australia Council.
- “People are always stealing my images and using them for their own pages, cd covers, to build up followers in social networks, and even to share viruses.”
- “A photo of mine was reproduced without my permission in an annual travel guide for 3 years running. I believe it was taken from the internet. I wasn't aware of it until the 3rd edition.”
- “My images downloaded and used on other sites. Images downloaded and expressed as someone else's work.”
- “My video was embedded into another website.”

In answer to the NAVA survey question “Have you ever had your copyright infringed in an online environment? If yes, how?” artists’ responses included:

- “Images were copied from my website and the art works offered for sale by an overseas website.”
- “My content has been posted by other people on sites including video sharing sites (sic) without my permission.”
- “I regularly have my work uploaded without my permission to "Pinning" sites (sic). Then people take my work from there, remove my name, and include it in their blog or upload it to other sites as their own.”
- “My photography was (sic) used as a sale banner to sell clothing by singular person in European country.”
- “I have had paintings copied and used online without permission, mostly in a non-profit way, but several are advertised on a Chinese site which offers copies for sale.”

Support for the Code

NAVA believes the Code will go some way towards assisting rights holders to take effective and proportionate steps to address online copyright infringement. Pleasingly, what is proposed does not require litigation against individuals. Rather, NAVA supports the focus on changing consumer behaviour by educating them to understand the implications of their unlicensed use of copyright material, respect the copyright owner’s rights and pointing them towards using the licensed services which are available to them to access genuine content.

We understand this is not the whole solution to the problem but it will help to address these issues in a non-litigious way. We also believe that the safe guards which have been built into the code should address any privacy concerns which people may have.

It is our position that the processes established in the Code will help rights holders who participate in the scheme to take steps to protect their creative content online in a way which is proportionate, that does not criminalise consumers but which helps consumers to understand the implications of their continued disregard for the rights holder’s creative content and their rights as a copyright owner.

The provisions for a public education strategy will help to make it clear to the public that internet content by artistic creators and copyright owners must be respected and accessed through licences, and that it is not necessarily available for free download and use or reuse.
NAVA is pleased with the progress to date, which has resolved most of the issues between creators and ISPs and looks forward to the finalisation and implementation of the Code and consequent benefits for Australian artists.

NAVA does not believe that the widespread disregard and abuse of copyright law especially in the digital environment justifies current non-compliance practices. Rather, NAVA believes that creators’ rights need to be more effectively and fully protected to support them and invest in Australia’s creative future.

NAVA would be happy to discuss further anything in its submission. We look forward to the finalisation and implementation of the Code.

Yours sincerely

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Executive Director