

COPYRIGHT AND DISPLAYED WORKS OF ART

A question has recently been raised by some members about copyright issues that may be involved in taking photographs of temporary exhibitions such as the annual outdoor Cottesloe "Sculptures by the Sea" but also indoors such as in a gallery.

The most useful and available document covering Australian copyright and photography is the booklet "Photographers & Copyright" published by the Australian Copyright Council in December 2014. This council is an independent non-profit organisation representing the peak bodies for professional artists and content creators as well as the major copyright collecting societies. It receives some financial support from the Federal Government through grants. The booklet offers guidelines for navigating the minefield of copyright law but importantly does not have any legal status. There is a copy of this booklet in the WCC library for those who are interested.

As with most activities we undertake, it is almost impossible to conduct photography in a totally risk free environment. WCC cannot offer legal advice on this issue but can suggest some principles to be followed which may minimise this risk in practice. This requires that members be aware of the main issues that are likely to attract attention.

Following is a brief summary of what we see as relevant to our members.

- Owners of copyright have a number of exclusive rights in relation to their copyrighted material including reproduction, publication and communication (meaning to transport or transfer the material). They do not have the right to control the display, sale or loaning of the copyrighted material or to prevent reproductions being used in a collage.
- The owner of a copyright may additionally hold "moral rights" as the creator and it should be noted that someone might hold "moral rights" as a creator without actually owning the copyright (because this has been re-assigned). Owners of "moral rights" have the right of attribution, protection against false attribution and integrity.
- The distinction between copyright and moral rights is like the difference between money and honour. Infringement of either can trigger legal action and the awarding of damages. Reason would suggest that risk would be increased where it could be shown that a copyright holder has been denied income or a moral rights holder has suffered a damaged reputation.
- Copyright is infringed if a substantial part of another person's copyright material is reproduced without permission unless there is a specific exception. In this context the term 'reproduction' seems to include photographs even though the original work may be in some different

media such as a sculpture. In theory it seems that using even a small part of a copyrighted artwork may infringe copyright.

- The most significant exception for photographers is that a work of art on permanent public display (for example in a gallery or public park) may be photographed without permission from the copyright owner. However this exception **does not apply** to works of art that are on temporary public display.
- There may be an exception if the organiser of the temporary exhibition has made it a condition of the exhibition that photography is permitted. It would be wise to approach the organisers and get such authority in writing if possible.
- It is uncertain as to whether the exception for objects on permanent display extends to the publication of such photographs on-line. The law is not up-to-date in this area.
- If you are capturing copyright protected materials as an incidental part of your images, such as the trademarks of third parties, then it is technically a reproduction which is a right reserved for the copyright owner. This does not depend on whether the copyrighted materials are on permanent or temporary display or whether they are displayed in a private or public place.
- If you are a professional or amateur photographer seeking to make a commercial gain from photographs that you have taken of copyrighted material then you need to get the consent of the copyright holder and this may involve some sort of commercial agreement.
- If you wish to publicly display your images of the copyrighted material you will need to obtain the consent of the copyright holder and provide an attribution to the creator as the holder of the moral rights.
- The infringement of moral rights may be nullified where consent is given by the owner or where the infringement is considered reasonable. In the latter case the reasonableness would depend on the nature of the work and the purpose, manner or context in which it is being used.

The above comments are just a summary and interpretation of the committee's reading of the aforementioned Australian Copyright Council document. It should not be taken as professional advice and members should make their own determination of whether there is any significant risk in the taking, processing and display of their images of copyrighted works.

WCC Committee
9 September 2015