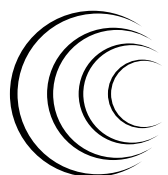


# CAL

## Notice of Extraordinary General Meeting (EGM)





COPYRIGHT AGENCY LIMITED

9 April 2010

Dear member

### **Extraordinary General Meeting**

On 7 April 2010, the Minister for Environment Protection, Heritage and the Arts announced his intention to appoint Copyright Agency Limited (CAL) as the society to manage the resale right for visual artists under the *Resale Royalty Right for Visual Artists Act 2009* (the Resale Royalty Act). CAL is delighted to accept this appointment and looks forward to representing rightsholders in this important new revenue scheme for Australian artists.

As a condition of that appointment the Government seeks to ensure that CAL's Constitution makes specific acknowledgment of the Resale Royalty Act and its obligations, and the amendments set out in the accompanying documents are designed to do this.

CAL will of course continue to manage the statutory schemes created by the *Copyright Act 1968* and its voluntary licence schemes, on behalf of all its members, and to represent the interests of its members in national and international forums for setting copyright policy.

I now invite you to an Extraordinary General Meeting of CAL. The meeting will be held at CAL's offices at Level 15, 233 Castlereagh Street, Sydney on Thursday 6 May 2010 at 4.30pm. For your information, the following documents are enclosed:

1. Notice of Extraordinary General Meeting, with attached proposed special resolution to amend CAL's Constitution;
2. Explanatory Memoranda concerning that proposed special resolution;
3. Proxy Form; and
4. Appointment of Representative Form.

I look forward to seeing you at the meeting. Should you have any questions regarding the Extraordinary General Meeting, please contact us by telephone (02) 9394 7600, or by email at [info@copyright.com.au](mailto:info@copyright.com.au).

Yours faithfully

Jim Alexander  
Chief Executive  
ENC 4



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ACN 001 228 799

## Notice of an Extraordinary General Meeting

Notice is given that an Extraordinary General Meeting of members of Copyright Agency Limited (the Company) will be held at CAL's offices, Level 15, 233 Castlereagh Street, Sydney NSW on Thursday 6 May 2010 at 4.30pm.

### Business

1. Apologies
2. Declaration of proxies\*
3. To consider and, if thought fit, pass the following resolution as a special resolution:
  - That, with effect from the date of the meeting, the articles of association of the Company be amended in accordance with Annexure A to the notice of meeting.

By order of the Board  
Caroline Morgan, Company Secretary  
9 April 2010

### \*Proxies

A member of the Company entitled to attend and vote has the right to appoint a proxy to attend and vote instead of the member. A proxy need not be a member of the Company. A form of proxy accompanies this notice.

To be effective, a form of proxy must be **received**:

- at the registered office of the Company at Level 15, 233 Castlereagh Street, Sydney NSW 2000; or
- by facsimile sent to the Company on +61 2 9394 7601

not less than 48 hours before the person named in the proxy form purports to vote in accordance with the appointment.

### Corporate Representative

A corporate member entitled to attend and vote has the right to appoint a representative to attend and vote on its behalf at the meeting. A form of appointment of a representative accompanies this notice. This document can be provided to the Company in the same manner as a proxy form at any time before or at the meeting.

# ANNEXURE A

## COPYRIGHT AGENCY LIMITED ACN 001 228 799 (Company)

### SPECIAL RESOLUTION TO AMEND CONSTITUTION

To consider and if thought fit pass the following resolution as a special resolution:

A. In Article 1(a), insert the following definitions:

**“Artwork”** has the meaning assigned to it under the Resale Royalty Act.

**“Resale Royalty Act”** means the *Resale Royalty Right for Visual Artists Act 2009*.

**“Resale Royalty Revenue”** means all remuneration payable under the Resale Royalty Act.

**“Resale Royalty Right”** means the right under section 6 of the Resale Royalty Act.

B. In Article 1(a), replace the definition of “the Rights” with the following:

**“Rights”** means the right to reproduce Copyright Material in any material form, the right to communicate Copyright Material to the public, the Resale Royalty Right and any other rights in relation to Copyright Material that the Company may be required or may agree to administer, including under an agreement with another Collecting Society.

C. In Article 1(a), replace the definition of “Work” with the following:

**“Work”** means a work in which copyright subsists under the Act or an Artwork.

D. Replace Article 3(d) with the following:

Any person to whom Article 3(a), 3(b) or 3(c) does not apply being either:-

- (i) any author of Copyright Material being the owner or holder of a Right in that Work, or the licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right; or
- (ii) any publisher of Copyright Material being the owner of a Right in that Work, or any licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right.

E. In Article 8(b), insert “or hold” after the word “own”, and in Article 8(c) replace the words “the Right in all copyright material which has been vested in him” with “all Rights which have been vested in him”.

F. Replace Article 68 with the following:

#### *Accounts*

The Directors shall cause to be kept such accounting and other records and shall cause to be prepared from time to time such profit and loss account and balance sheet as are required by the Corporations Act 2001 and the Resale Royalty Act; and every such profit and loss account and balance sheet shall be dealt with in accordance with the Corporations Act 2001, the Resale Royalty Act and the Act.

G. Replace Article 69 with the following:

#### *Separate Accounts for Equitable Remuneration and Resale Royalty Revenue*

The Directors shall cause separate accounts and records to be kept in respect of:-

- (a) the receipt and expenditure of all Equitable Remuneration;
  - (b) the manner in which the entitlement of Members to Equitable Remuneration is determined and carried out;
  - (c) the receipt and expenditure of all Resale Royalty Revenue; and
  - (d) the manner in which the entitlement of Members to Resale Royalty Revenue is determined and carried out
- and, in doing so, shall as far as possible, adopt a consistent practice in allocating receipts and expenditure to Accounting Periods.

H. Replace Article 71 with the following:

#### *Inspection of Records*

The owner or holder of any Rights in relation to Copyright Material shall be permitted to inspect the records of the Company at such times and places and under such reasonable conditions or regulations that the Directors shall from time to time determine, provided that any such owner or holder notifies the Company in writing that he wishes to do so, and such notice specifies as the day of inspection an ordinary day, not earlier than 7 working days after the date on which the notice is deemed given.

I. In the text and heading of Article 73, insert “and Resale Royalty Revenue” after “Equitable Remuneration”, wherever occurring.

- J. Insert the following as Articles 73A and 73B to follow Article 73:

#### **COLLECTION AND DISTRIBUTION OF RESALE ROYALTY REVENUE**

##### *73A Establishment and Application of the Resale Royalty Revenue Fund*

Resale Royalty Revenue collected by the Company from all sources including income derived from the investment of any of the Resale Royalty Revenue shall be held on trust as a separate fund to be paid in accordance with the Resale Royalty Act to each holder of the Resale Royalty Right less the Company's administration fee.

##### *73B. Article 73B Trust Fund for Resale Royalty Revenue*

- (a) The Company shall hold on trust and separately account for:
- (i) Resale Royalty Revenue to which a holder of the Resale Royalty Right is entitled where the holder of the Resale Royalty Right cannot be located or identified;
  - (ii) Resale Royalty Revenue to which a holder of the Resale Royalty Right is entitled under the Resale Royalty Act;
  - (iii) Resale Royalty Revenue the entitlement to which is disputed;
  - (iv) Resale Royalty Revenue required to be held under arrangements between the Company and other Collecting Societies; and
  - (v) such part of Resale Royalty Revenue as the Directors determine to be reasonable for allocation at a later time where the Directors consider that the information available is insufficient or not sufficiently accurate to enable an equitable and accurate allocation to be made.

##### *b. Retention in Article 73B Trust Fund*

All moneys transferred to this Article 73B Trust Fund shall be held upon trust for a period of at least six years from collection or such other period as may be provided for by the Resale Royalty Act.

- K. Insert the following as Article 84 to follow Article 83:

#### **RESALE ROYALTY RIGHT**

84 As regards the collection and distribution of Resale Royalty Revenue the following provisions shall have effect notwithstanding anything to the contrary in these Articles; namely:

- (a) the Company shall exercise reasonable diligence in the collection of Resale Royalty Revenue in accordance with the Resale Royalty Act;
- (b) interest earned by the Company on Resale Royalty Revenue shall be included in payments to the holders of the relevant Resale Royalty Rights in accordance with the Resale Royalty Act; and
- (c) a trust fund, in these Articles called the Article 73B Trust Fund, shall be operated by the Company for purposes set out in 73B and in accordance with the Resale Royalty Act.

- L. Insert the following as Article 85 to follow Article 84:

#### **COMPLAINTS BY MEMBERS**

85 The Company shall establish and maintain a complaint notification and handling procedure for dealing with Member complaints, including Member complaints in relation to Resale Royalty Revenue.



COPYRIGHT AGENCY LIMITED

ACN 001 228 799

## **Special resolution to amend the Constitution for the purposes of the *Resale Royalty Right for Visual Artists Act 2009***

### **Explanatory Memorandum**

The Board of Copyright Agency Limited recommends the amendments to its Constitution described below for consideration and resolution by members at an extraordinary general meeting.

A fully marked-up version of the Constitution setting out all proposed amendments is available for members to review and download at [www.copyright.com.au](http://www.copyright.com.au). Paper copies will also be available to members at the meeting.

### **Background**

On 7 April 2010, the Minister for Environment Protection, Heritage and the Arts announced the intention of the Government to appoint Copyright Agency Limited (CAL) to manage the resale right for visual artists under the *Resale Royalty Right for Visual Artists Act 2009* (the Resale Royalty Act). CAL is delighted to accept this appointment and looks forward to representing rightsholders in this important new revenue scheme for Australian artists.

Artists will be entitled to a royalty of 5% of the sales price of commercial resales of their works for over \$1,000. The right is inalienable and artists will receive the royalty even if the copyright has been assigned. Similar schemes are in place in over 40 countries, including the UK and most of Europe.

As a condition of appointment, the Government seeks to ensure that CAL's Constitution makes specific acknowledgment of the Resale Royalty Act and its obligations, and the amendments proposed in the draft special resolution are designed to do this.

CAL will clarify that holders of the resale royalty right are eligible to join CAL as author members. In addition, the proposed amendments will require CAL to hold and account for payments under this scheme separately from other CAL licence schemes. CAL will of course report on the management of the scheme in its annual report.

The purpose and effect of each amendment is as follows:

- Article 1 will include new definitions of Artwork, Resale Royalty Act, Resale Royalty Revenue, Resale Royalty Right, Rights and Work.
- Articles 3(d) and 8 will be amended to acknowledge that authors who are holders of Rights (as well as "owners") are eligible to become CAL members, and to cease membership.
- Article 71 will acknowledge the right of holders of the resale royalty right to inspect CAL's records in the same manner as other rightsholders.
- Article 84(a) imposes a general obligation on CAL to be reasonably diligent in the collection of resale royalty revenue, in similar terms to its obligations regarding the collection of revenue under CAL's other licence schemes.
- Articles 69, 73, 73A, 73B, 84(b) and 84(c) require CAL to separately account for resale royalty revenue, including interest, and to hold that revenue as a separate trust fund.
- Article 85 requires CAL to establish a complaint notification and handling procedure, including for complaints in relation to resale royalty revenue. CAL has had complaint management procedures in place for some years, which will be modified as appropriate to cover complaints under this new scheme.

# Proxy Form



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ACN 001 228 799

I/We.....  
*(please print your full name or the name of your organisation in block letters)*

of.....  
*(address, including state and postcode)*

phone:..... fax:..... email:.....

being a member of Copyright Agency Limited (the Company), appoint:

.....  
*(full name of proxy)*

of.....  
*(address of proxy, including state and postcode)*

or in his or her absence or if no person is named, the Chair of the meeting, as my/our proxy to vote for me/us and on my/our behalf at the Extraordinary General Meeting of the Company to be held at CAL's offices, Level 15, 233 Castlereagh Street, Sydney NSW at 4.30 pm on 6 May 2010, and at any adjournment of that meeting.

## Voting instructions

I direct my proxy to vote as set out below. If no instructions are given, my proxy may vote as he or she sees fit. The Chair intends to vote any undirected proxies in favour of the resolutions.

That, with effect from the date of the meeting, the articles of association of the Company be amended in accordance with Annexure A to the notice of meeting.

For

Against

DATED..... 2010

Please indicate preference by a

.....  
*Sign above if you are signing as an individual OR*

Sign below if you are signing on behalf of a company or other organisation and see note 4 below.

Signed for and on behalf of.....  
*Name of company or other organisation*

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Office held - indicate if sole director

.....  
Office held - indicate if sole director

## Please note that:

1. A proxy holder need not be a member of the Company.
2. A proxy form must be signed by or on behalf of the member or by the member's attorney.
3. If this form is signed by your attorney please provide a certified copy of the power of attorney.
4. Proxy forms of companies or unincorporated organisations may be signed by their attorney, by two directors, by a director and secretary or (in the case of a sole director company) by the sole director.
5. Any proxy form in which the name of the proxy is not filled in will be deemed to be given in favour of the Chair of the meeting.
6. The Company's articles of association require that, to be effective, a completed proxy form together with any power of attorney under which it is signed, must be received by the Company not less than 48 hours before the proxy purports to vote in accordance with the proxy. Completed proxy forms may be sent or delivered to the registered office of the Company at Level 15, 233 Castlereagh Street, Sydney NSW 2000 or faxed to the Company on (02) 9394 7601.



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## For Organisations, Societies and Companies

If you have not previously provided CAL with a completed copy of this form, or if you wish to confirm or vary the appointment of your authorised representative, please complete and return this form to ensure that your current authorised representative is entitled to represent your organisation and vote at the next General Meeting.

### Copyright Agency Limited (the Company)

#### Appointment of Representative

.....Limited ABN/ACN.....(Member)

being a member of the Company, certifies that it has, in accordance with section 250D of the Corporations Act 2001

authorised ....., or, failing him or her, then .....

(Appointee) to act as its representative at meetings of members of the Company. Under that authority, the Appointee is entitled to exercise the same powers on behalf of the Member as the Member itself could exercise if it were a natural person who is a member of the Company.

Dated: this ..... day of ..... 2010

**Signed\* for and on behalf of .....**

in the presence of:.....

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Office held - indicate if sole director

.....  
Office held

Note\*: Two directors or a director and secretary (or in the case of a sole director company, the sole director and secretary) should sign this form on behalf of the Member company, society or organisation.