



PO Box 60 Potts Point  
NSW 1335 Australia  
T +61 2 9368 1900  
F +61 2 9358 6909  
E nava@visualarts.net.au  
www.visualarts.net.au  
www.artistcareer.com.au  
ACN 003 229 285  
ABN 16 003 229 285

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Patrons:  
Pat Corrigan AM  
Professor David Throsby



15 November 2013  
The Executive Director  
Australia Law Reform Commission  
By Email: [privacy@alrc.gov.au](mailto:privacy@alrc.gov.au)

Dear Professor McDonald,

The National Association for the Visual Arts (NAVA) welcomes the opportunity to respond to the Australian Law Reform Commission (ALRC) Issues Paper 43, *Serious Invasion of Privacy in the Digital Era*, (**Issues Paper**).

### **About the National Association for the Visual Arts**

The National Association for the Visual Arts (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 3,000 individual and organisational members. 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 professional services to its constituents through offering expert advice and referrals, grants, career development opportunities and training, on-line and hard copy resources and a range of other services.

NAVA's vision is an arts sector that is professional, innovative and central to Australian life, one that is able to grow and expand the creative capital of Australia in an environment that is supportive and focused on the continued development of contemporary culture and the safeguarding of the rights of arts practitioners. NAVA has made many submissions, recommendations and responses to inquiries and given expert assistance in the development of policies at all levels of government. It has continued to advocate for the rights of artists - economic, social, political and cultural and for their economic viability, reputations and artistic practice to be supported in Australia. This means ensuring the viability of artists' careers and the sustainability of their support organisations. It also means trying to secure legislation, policy and regulation that achieves this purpose.

### **The effect of the privacy discussion on NAVA's constituency**

NAVA's submission on behalf of its members and constituents is informed through its unique position as the national peak industry body, bridging the worlds of art, policy and legislation development and the three tiers of government. NAVA's constituents are creative professionals who are:

- dedicated to their practice, critical ideas and the production and dissemination of visual culture in Australia
- usually working as sole traders or small to medium enterprises across artforms and media, or providing creative services to other industries
- engaged with new technologies and exploring their potential
- entrepreneurial in seeking professional opportunities in Australia and overseas
- economically vulnerable practitioners with limited ability to enforce their rights
- wanting to abide by existing legislation and protocols while at times challenging orthodoxies.

Of the estimated 2,500 requests for advice a large proportion cover issues raised by the Arts Law Centre of Australia's submission. Visual artists are mainly concerned with:

- Freedom of Expression
- Requirements for the taking of images especially in relation to Indigenous Arts, children, public events and people in a public place.
- The use of images particularly with relation to digital media (both their own and those of others)
- Confidentiality

### **NAVA's position on the increased protection of privacy in Australia's digital realm**

NAVA supports the statements made by the Arts Law Centre of Australia that specifically effect artists and arts organisations in Australia. More specifically NAVA supports the Arts Law Centre's responses to the Questions 1 – 28 in the Issues Paper 43, *Serious Invasion of Privacy in the Digital Era*.

NAVA's knowledge and understanding of the experiences of artists in Australia, leads us to be very concerned over the potential restrictions new legislation may place on artists. NAVA urges the ALRC in any recommendations or decisions it makes, to uphold the rights of freedom of expression not only for artists but for all members of the community recognising the value of artistic practice in all its diversity and enabling artistic careers.

NAVA is concerned that there should be no inhibiting of artists being able to exercise their democratic right to represent, discuss and present ideas through their artwork or other forms of public and private expression. NAVA asserts that, as with all Australian citizens, artists should be free to challenge or represent the social and cultural fabric including discussions or events that may occur in the public realm. This is particularly significant for artists in protecting their practice, their income and their ability to critique, contributing to an intellectually healthy and engaged society.

NAVA acknowledges that there are occasions when the right to freedom of speech and expression must be balanced against the need to protect vulnerable members of the community against violation of their rights. However, NAVA believes that without current legal rights to freedom of expression or artistic expression a broad cause of action for invasion of privacy will negatively impact artist abilities to create and earn income rather than addressing specifically the activities which could be seen as harmful and offensive. Artists rely on the communication, reproduction and exhibition of their work as a means of undertaking their business practice and obligations and earning income and NAVA urges the ALRC to ensure artists and arts organisations are not unduly restricted by a statutory cause of action for serious invasion of privacy.

For further information please contact Tamara Winikoff or Brianna Munting if you would like us to expand on any aspect of this submission. We can be contacted at [twinikoff@visualarts.net.au](mailto:twinikoff@visualarts.net.au) or [bmunting@visualarts.net.au](mailto:bmunting@visualarts.net.au) on (02) 9356 2566.

Yours faithfully



Brianna Munting  
Deputy Director