

How to protect student artists' rights



Educator Guide

Code of Practice for Visual Arts, Craft and Design

First published by National Association for the Visual Arts (NAVA) in November 2022. Written by Alise Hardy. Edited by Donnalyn Xu. Cover illustration by Claudia Chinyere Akole.

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How to use this guide

This guide gives educators information on the rights of their students as artists. The recommendations provided in this guide come from the Code of Practice for Visual Arts, Craft and Design (**the Code**) published by the National Association for the Visual Arts (NAVA). Read NAVA's guide '**How to** use the **Code of Practice in the Classroom** for more information about the Code in Education.

Further information is provided via a link when text is **in bold**.

While this guide has been designed for secondary school educators, students, curriculum and syllabus, the information can be applied to all levels of school education.

Use it while preparing a unit of learning and refer to it for specific ideas when lesson planning.

The information provided in this guide is not legal advice. If legal advice is required, you can contact **Arts Law** or **Copyright Agency**.

About the Code of Practice

NAVA's Code of Practice for Visual Arts, Craft and Design (**the Code**) sets out equitable, ethical and self-reflective standards for the professional Australian contemporary arts sector.

The Code covers good practice guidelines for the interactions between artists, arts workers and organisations (like galleries, arts centres and schools).

Learning with the Code

Learning about the Code at school means students will become professional artists with careers that are successful and sustainable, and arts workers that ensure artists are treated equitably, acknowledged correctly and paid fairly.

The Code can be used as a starting point to explore all aspects of what it means to be a contemporary visual artist, craftsperson, designer or arts worker in Australia.

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Topics in this guide

- **Intellectual Property**
- **Indigenous Cultural and Intellectual Property (ICIP)**
- **Copyright**
- **Moral Rights**
- **Freedom of Expression creators**

The Code says...

'All children and young people deserve to have their creative contributions acknowledged'
Education and Workshops in Code of Practice, 2022

Introduction to artist rights

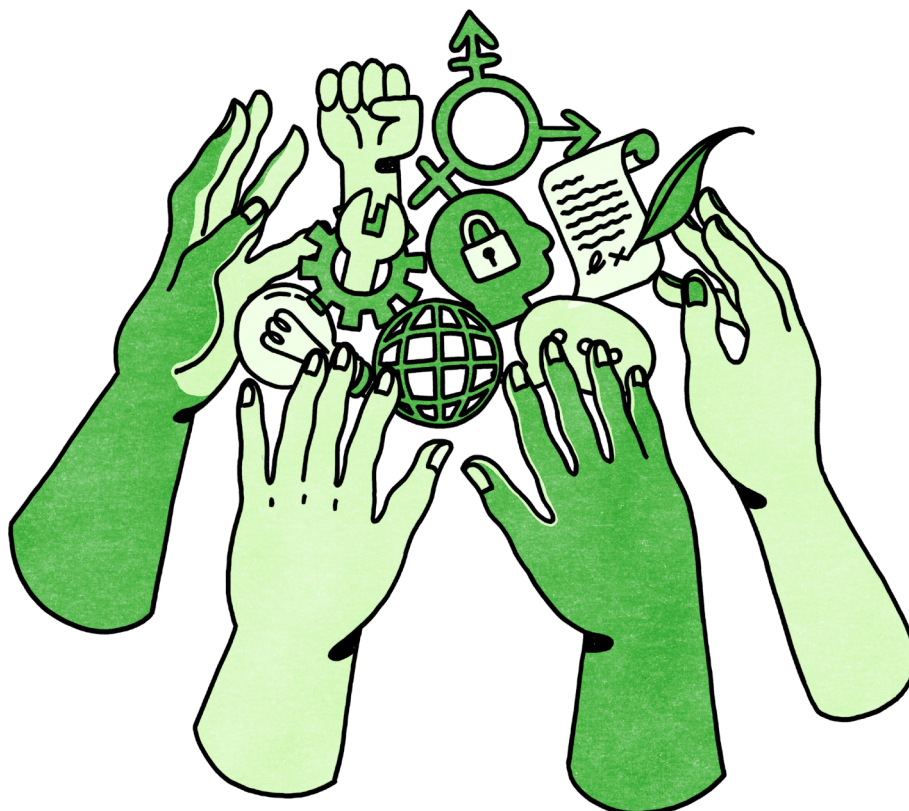
All artists, including student artists, have rights that are protected by law. These include freedom of expression, intellectual property rights, copyright and moral rights.

First Nations artists, including student artists, have the right to self-determination. Artwork which incorporates Indigenous Cultural and Intellectual Property (ICIP) must be guided by cultural protocols.

It is not only ethical to ensure students' rights are upheld, but also sets the expectation of ethical behaviour for when they enter the industry after school as artists, artworkers and art consumers.

Are artists' rights included in Australian law?

Many artists' rights are protected by Australian law, while others are good-practice ethical standards that are enshrined in international declarations or conventions. These are outlined on the following pages.



What rights do artists have?

Intellectual Property

The term 'intellectual property' or 'IP' refers to the property rights that arise in the outcomes of creative and intellectual processes, such as artworks, designs and inventions. These rights include copyright and moral rights, and are legal tools that artists can use to protect their work from unauthorised use, protect their reputation or brand, and generate income.

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First Nations Intellectual Property

First Nations peoples heritage, which is grounded in thousands of generations of First Nations people, is their cultural expressions and Indigenous Cultural and Intellectual Property (ICIP).

'ICIP rights' refer to the rights of Indigenous people to their heritage.

First Nations people have customary laws that outline who can access, share and use their heritage, cultural and intellectual property in accordance with law and custom.

Cultural and intellectual property includes:

- literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs)
- scientific, agricultural, technical and ecological knowledge (including cultivars, medicines and the phenotypes of flora and fauna)
- all items of movable cultural property
- human remains and tissues

- immovable cultural property (including sacred and historically significant sites and burial grounds)
- documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

Copyright protects the work of individual artists, but Australia does not yet have a law that prevents the alteration, distortion or misuse of cultural and intellectual property. Misuse of ICIP can result in cultural harm to the artist, their family and their community. Observance of ICIP is a good-practice ethical standard.

On First Nations, the Code says...

'Indigenous Cultural and Intellectual Property (ICIP) refers to the rights of Aboriginal and Torres Strait Islander peoples to their heritage...ICIP remains the property of the traditional owners. It includes the right of attribution, the right of integrity and the right to benefit sharing. Misuse of ICIP can result in cultural harm to the artist, their family and their community'

Principles, Ethics and Rights in Code of Practice, 2022

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Copyright

Under the Copyright Act 1968 artists hold the automatic and free right to reproduce their work, publish their work and communicate their work to the public. In most cases others are not able to copy an artist's work or use images of the artist's work without their permission, and this is legally enforceable. Importantly, an artist should not be asked to assign or waive their copyrights.

The Copyright Act includes a few specific exceptions when copyright is not automatically held by the creator, such as when a portrait is commissioned or material is created as an employee for an employer. Copyright material can be used without permission when the work is used for a person's study or research, reporting news, criticism, review, parody or satire.

There are also copyright exceptions when a work is on permanent public display. People can paint, draw, photograph or film three-dimensional work such as sculptures that are on permanent public display and use the resulting images without seeking permission. However, this exception doesn't extend to other artistic works such as paintings, murals or mosaics.

Copyright & Education

Under the **Statutory Education Licensing** scheme, educational institutions can reproduce and communicate copyright material for educational purposes without permission from the artist. While following this rule is legally acceptable, NAVA encourages educators to seek permission from student artists to reproduce, publish or communicate their work, including when parental or guardian permission is also required.

Moral Rights

Moral rights are included in the Copyright Act 1968. Artists' moral rights include the right to be attributed as the creator of the work, to not have work falsely attributed (i.e. for someone else to be attributed as the creator of the work) and to have the integrity of their work respected (i.e. to not have the work subjected to derogatory treatment).

On moral rights, the Code says...

'Moral rights are personal rights that belong to the creator of the work, whether the creator owns copyright or not, and apply to the physical work, and any reproductions or images of the work'

Principles, Ethics and Rights in Code of Practice, 2022

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Freedom of Expression

Freedom of expression is a human right which is particularly valued by artists. It is included in the **UN Declaration of Human Rights** and **UN Convention on the Rights of the Child**. Unlike the United States, Australia has no legislated constitutional right of free speech.

The Code advocates for freedom of artistic expression and asserts that censorship should not be used to constrain artists from exercising this right within the law.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) statement on **Artistic Freedom** outlines the following set of rights to freedom of artistic expression encouraged in international law:

- the right to create without censorship or intimidation
- the right to have artistic work supported, distributed and remunerated
- the right to freedom of movement
- the right to freedom of association
- the right to protection of social and economic rights
- the right to participate in cultural life

Currently in Australia visual artworks are not required to be classified unless they are videos or video games, films or certain publications. However, there are times when artists will seek classification in order to avoid potential problems with censorship.

On freedom of expression the Code says,

'Freedom of expression is a universal human right which is particularly valued by artists... it is not effectively protected by Australian law which can result in confusion and contention over artistic works. Freedom of expression is essential for the wellbeing of democratic societies'

Principles, Ethics and Rights in Code of Practice, 2022

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Key recommendations

Teach students about their rights as artists

Explicitly teaching students about their rights as artists is included in the curriculum. It is also crucial that students know what their rights are, when and how they apply them so that they can make ethical and lawful decisions in their own visual art practice as students and future professionals.

Model good practices to students

Educators and students can legally use copyright materials at school without permission. However, asking permission from student artists to reproduce, publish or communicate their work is ethically-driven practice.

Respecting artists' moral rights is both a legal and ethical practice. This means that artists should be correctly attributed as the creator of a work when their work is displayed or used in any form. You can do this by simply using their name or providing more information like a gallery wall label. Remember, moral rights apply to all creators regardless of whether they are a professional artist or student artist.

Use of ICIP without the consent of First Nations artists undermines the principle of self determination. The artist and their community have the right to control the use of communally owned knowledge so its integrity is maintained by cultural protocols. This has implications for educators and students when studying the work of First Nations artists. A good place to start is by never replicating First Nation artists' work and to instead place the artwork as a starting point or provocation in the learning process and creation of student artists' work.

Advocate for artists' rights in education

Write, display and share a manifesto for artists' rights - including professional artists and student artists. You could do this as an individual, department or even as a class. Display your manifesto proudly on the art classroom door, recite it at assembly and share it with leadership. Don't be afraid to point out unethical or unlawful practice.

Have your students follow good practices

Make artists' rights an integral part of assessment. Include copyright, moral rights, ICIP and freedom of expression expectations in assessment rubrics.

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Teach 'freedom of expression' in the visual art classroom

In Australia, when we talk about 'freedom of speech' we are actually talking about two things: freedom of opinion or belief, and freedom of expression.

Freedom of opinion gives us the right to hold a belief without interference, exception or restriction. This means we can believe anything we want. Freedom of expression is more complicated, and means that we have the right to give our opinions, advertise, display art and protest, but within limits.

As visual arts educators, we engage students in identifying, understanding, recognising, and acknowledging the power of art and artistic expression.

The Code positions 'freedom of expression' within the context of the law, human rights, responsibility and censorship. Framing classroom discussions about freedom of expression within these contexts allows educators to support students' artistic expression while also being age-appropriate and sensitive to school and wider community values.

Helpful resources from NAVA

Articles

- **NAVA defends anti-police sentiments in artwork**
- **Artists speak out against censorship of work dealing with the emotional toll of war**
- **Q&A with Dr Olive Watts**

Factsheets, Guides and Checklists

- **Intellectual Property**
It is fair for artists and designers to be entitled to control the use of their intellectual property. This resource outlines the important role NAVA has played in advocating for the protection of artists' and designers' economic and moral rights both in law and in practice.
- **Children and Art Issues**
In relation to the representation of children in art, from time to time artists have to defend themselves against the accusation that their work offends community standards. This has led to some changes in legislation and regulation. However, the debate continues about what kinds of artistic representations of children are permissible and what are the appropriate guidelines.

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- **Classification of Artwork**
Currently in Australia visual artworks are not required to be classified unless they are videos or video games, films or certain publications. However, there are times when artists will seek classification in order to avoid potential problems with censorship.

Further reading and ideas

- **First Nations Cultural and Intellectual Property in the Arts**
Australia Council for the Arts
- **Convention on the Rights of the Child**
United Nations
- **Children in the Creative Process**
Arts Law
- **Exhibition Labelling**
Museums and Galleries of NSW
- **Free speech doesn't mean you can say whatever you want, wherever. Here's how to explain this to kids**
The Conversation
- **Automated plagiarism: Furore over 'computer' winning art prize**
Arts Hub
- **Labelling 'fake art' isn't enough. Australia needs to recognise and protect First Nations cultural and intellectual property**
The Conversation