

# Viscopy – Australia's Visual Arts Copyright Collecting Agency

Visual Arts  
Copyright Collecting  
Agency

viscopy

## A guide and checklist for VISCOPY members on WAIVING FEES for the use of your work....

### Introduction

As a **Full Member** of **VISCOPY**, you have granted us the exclusive right to collect payment on your behalf for the use of your artistic works (except for any works that you have excluded from the membership agreement). This means that any licensing of your work for payment must be handled by us.

Sometimes you may be approached by other people from organisations including publishers or other commercial organisations, or by colleagues, who ask for free permission to use your work. What should you do in this situation? Your agreement with **VISCOPY** does not prevent you from granting people free permission to use your works, but you need to **let us know which works you are licensing for free**.

If you **do** decide to grant a free licence, you will be responsible for "administering" that licence. **VISCOPY** will be unable to assist to enforce the licence if, for example, the licensee were to alter the work without your permission, fail to credit you, or fail to provide you with your free copy of the work in contravention of the agreement.

To make sure that your interests are fully protected, we recommend that you have a very careful look at any documentation you are asked to agree to or sign.

**THE CHECKLIST OVERLEAF IS DESIGNED TO HELP YOU ENSURE THAT ALL THE IMPORTANT ASPECTS OF THE AGREEMENT ARE SATISFACTORY AND IN THE LONG-TERM INTERESTS OF YOU AND ANYONE ELSE WHO MAY HAVE AN INTEREST IN YOUR WORK, SUCH AS YOUR HEIRS.**

The checklist is just a guide containing some of the more important matters to consider – there may be other matters that you want the agreement to deal with. The checklist is *not* a substitute for legal advice.

If the document you're being asked to agree to does not contain one of the above provisions, you can contact us to discuss it: email us at [Viscopy@viscopy.com](mailto:Viscopy@viscopy.com)

### Remember .....

If you grant a free licence you need to do two things:

1. Make sure the licence agreement is in writing
2. Make sure the agreement is fair and appropriate;

and then let **VISCOPY** know which works and what purposes you are licensing for free, so that we will not licence the use of those works for a fee – we have a form that you can use for this purpose which has been enclosed.

### Digital rights

If you granted someone a free licence before **4 March 2001** that is still in existence (eg. because the person hasn't yet used or is still

using your work), there may be a question mark over whether it is effective to grant that person any rights in relation to online uses.

This is because the right of communication to the public, which gives copyright owners the right to control electronic transmissions and the making available of their works online, did not exist before that date.

The Copyright Act provides that unless agreements entered into before that date clearly dealt with online rights, those rights remain with the copyright owner. This means that if the person you made the agreement with wants to use your work on a website, for example, they may need to get separate permission for this from you.

### *A message from VISCOPY members Jan and Alan Rees – Executors of the Estate of LLOYD REES, ...*

"The fees we have sought have not been large or in any way excessive – after all, it's not been our aim to prevent the reproduction of the work by making the project commercially non-viable, but merely to ensure that the creator of a work receives equitable remuneration where the work is used for commercial purposes.....

There is an equally important reason. Because we are, financially, relatively well-established, and the individual royalty payments are not large, we would not be significantly disadvantaged if we did waive fees.

However, other artists are not in this financial situation, and royalty payments could well be an important source of income, particularly for struggling or emerging artists.

I could not tolerate a situation where a struggling artist was told, "I don't see why we should pay you a royalty – after all, we don't pay royalties to reproduce the works of X or Y".

Jan and I thus feel that we owe it to the community of artists, and particularly those younger and less well-off amongst us, that fair and appropriate payment is made whenever a work by Lloyd Rees is reproduced in the commercial market."

### Contacts for more information.....

Membership: [members@viscopy.com](mailto:members@viscopy.com)  
Licensing: [licensing@viscopy.com](mailto:licensing@viscopy.com)  
General enquiries: [Viscopy@viscopy.com](mailto:Viscopy@viscopy.com)

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VISCOPY values its' members' privacy, and complies with the requirements of the National Privacy Principles in the Federal Privacy Act 1988.

## VISCOPY CHECKLIST – WAIVING FEES for the use of your work...

1. Are all the parties to the agreement clearly identified (eg. by name, ACN, address)?	Y/N
2. Is the work (or works) that the other party wants to use clearly and unambiguously identified (eg. "the sculpture entitled....., a copy of which is attached")?	Y/N
3. Is the proposed use (or uses) of the work by the other party made clear (eg. "to reproduce as postcards in a print run of 5000"; or "to reproduce on the Licensee's web site") and are vague undefined terms, such as "promotion", avoided?	Y/N
4. Does the document grant a licence to use the work/s for a specific purpose, rather than transfer of ownership of the copyright (an assignment)?	Y/N
5. Is the licence to use the work/s limited to a particular length of time?	Y/N
6. Is the licence to use the work/s limited to the particular territory in which the other party will be using it (eg. Australia; Australia and New Zealand)?	Y/N
7. <b>Identification as copyright owner:</b> Are you identified in the document as the owner of copyright in the work/s, and does the other party have to put the copyright notice in your name on the work/s when it is used?	Y/N
8. <b>Identification as creator:</b> Is the party obliged to make sure that you are identified as the creator of the work/s each time it is used? (This is a requirement under moral rights legislation, but is a good idea to include in the agreement also).	Y/N
9. Is the other party obliged to get your permission before any alteration is made to the work (eg. cropping, overprinting or re-colouring) and to ensure that reproductions and other uses are of a high standard?	Y/N
10. Are you entitled to end the agreement (eg. at will, or if the other party does not comply with the agreement)?	Y/N
11. Are your rights to receive income from the use of your work under statutory licenses (eg. educational and government use licenses) preserved? You can use the following wording for this purpose: <i>"Nothing in this agreement will prevent the Artist/Licensors [or whatever term is used to describe you] from being entitled to receive payment for the use of his/her work under statutory licences in force in Australia or under the law of any other country, including licences for educational and government use, and the Publisher/Producer/Licensee for whatever term is used to describe the other party] will make no claim to such payments."</i>	Y/N
12. Are you entitled to a free copy of the work as used (eg. a copy of a catalogue which includes the work) and a copy transparency or digital file?	Y/N
13. Are there any provisions regarding the supply of and payment for transparencies or digital files and their return or destruction after use?	Y/N
14. Are there restrictions on licensing of the work/s to third parties?	Y/N

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