

**I am not a IP or legal expert, below are my thoughts after reading the Draft Submission report.**

**Although I am not a legal expert, As a retailer supporting original design from both Australia and imported from overseas, my business is affected daily by replica, knock-offs and fake works, many of which are “legal” in this country.**

**I am confronted with the destruction of Australian design and designers having their IP stolen and thereby livelihood destroyed - every day. I have many specific case studies and stories of young Australian designers that face economic hardship directly relating to copies of their work. Even the most sophisticated brands and experienced designers have very little knowledge on what they should do to protect themselves, and even those that do feel the protection does not go far enough given the cost and feel it is not “worth it” because they will never win anyway (small designers up against large department stores etc)**

**Below is a summary of my disappointment and thoughts after reading the draft report on IP Protection in Australia, which worsens instead of better the outcome for small business creators and inventors – and therefore reduces the viable economic outcome in the design/maker sector in Australia.**

**Terri Winter – top3 by design**

The very “grey” and in some areas non-existent protection of designers in this country means independent designers have become “unpaid product testers for the big brands” (thought emailed to me by designer Ryan Hanrahan from design firm “Page Thirty Three” to cherry pick their new season collection, utilising social media to seek out products that have gained consumer interest. In Europe these designers would be compensated for their loss,.. in Australia they are not, many give up,.. change jobs or have to rely on social welfare.

Even if products are registered the process is complex, expensive and many designers feel that it does not provide them protection anyway. A designer might design many different products for every highly successful one they release, protecting them all before they can even put them in the public domain for feedback is not viable.

Some of my initial personal thoughts:

1. In its current form protection of a designer’s rights to their own work and ideas does not provide enough support to a designer to have a stable and valued full time career.
2. Design protection should automatically come under copyright law and not be a paid application process separate to copyright.
3. I support the concept of a “policy champion” and consolidating responsibility for IP policy in a single entity, and the broad concept “selectively drawing upon broader panels of experts of an expert advisory panel for IP Law”.

4. Given we all now live in a global world I support the exploration of a simplified way in which to approach international IP protection but given the complexity of this situation I do not have a specific view on how that should be best achieved at this point.

**Something I do not see raised or addressed in the Draft document:**

Copyright in regards to social media platforms. It is the primary purpose and interest in use of social media to share ideas. IP law needs to allow for new social media channels and the "fair" sharing of content - i.e.: sharing without express prior permission where all content is fully credited and linked to the original source and used within its original context.

**Some thoughts on existing and proposed IP Protection**

*FROM THE DRAFT REPORT: "The community as a whole will be better off The Commission's draft recommendations have been made on the grounds that collectively they advance the balance of interests needed in Australia's IP arrangements and thereby the wellbeing of the Australian community."*

*"As with many other reforms, those who seek to gain from IP protections are concentrated and have actively sought to shape policy for their benefit, while those who stand to lose are dispersed and less aware of what is at stake, and so are less vocal and influential in policy debates."*

Protection of the rights of designers to their own work is imperative for the economical survival of our Innovative Nation.

Theft of ideas and the blatant copying of original designers work not only robs them of their livelihood, but has flow on effect to the rest of the economy.

The replica industry and the creation of fake product all relies on the success of the original product.

If there is no protection for designers to their work it will kill off an industry of innovation and creation. **This is a downward economic spiral.** There will be no incentive to enter the design industry as a career path. **If there is no original product then there is nothing left to copy.**

**Replica as a trend or movement in this country**

Outside the immediate design industry the word replica is not a dirty word. The lax protection laws in this country have allowed "replica" to become a "genre" or "movement" in this country which is creating a culture where Australians feel it is ok to steal another persons work.

A replica in the true sense of the word would indicate a true representation at any rate – rather than a cheaper version of lower quality. Never in my 15 years in retail have I come across a fake that improves on the original. Fakes are intentionally created as a

cheaper version and the materials and processes used to achieve this are a compromise on quality.

Designers and brands spend a lot of time and energy testing their products to ensure they meet the conditions in which they will exist. Outdoor furniture for example. For consumers to have the understanding their replica won't last long and they will check it out cannot be in the interest of the environment or the consumer who is then constantly replacing the product.

### **Replica and knockoff product is NOT in the interest of consumers**

*FROM THE DRAFT DOCUMENT: "those who seek to gain from IP protections are concentrated and have actively sought to shape policy for their benefit"*

Designers in this country are not reaping massive incomes from their works – and even if they take out design registration – the fact it only lasts 10 years means they rarely obtain much in the way of rewards from their work. There are very few full time designers in this country – with most having an income supplemented through teaching in our Universities or working several days a week in other roles.

*FROM THE DRAFT DOCUMENT: "Improving Australia's IP arrangements will primarily benefit consumers by improving access to new and cheaper goods and services."*

The government appears to feel that protecting the rights of the replica industry is in the interest of Australian Consumers.

It is impossible to see how the creation of low quality product which will not last and in many instances is creating customer confusion and dissatisfaction can in any way be in the consumer interest. Understandably customers have different budgets. If I cannot afford a Ferrari I cannot buy one, I will buy the model car I can afford to own. The argument to allow others to create a cheaper copy of the Ferrari for someone who cannot afford the real one would make no sense – and yet this situation is the same argument for the allowance of a cheaper copy of an authentic piece of furniture. There are original products available for all budgets. Not having the money for an expensive chair should not give anyone the right to have a copy of it made legal.

The manufacture, supply and purchase of cheap knockoffs and replica adds to landfill and is not a sustainable solution. In the interest of all Australians consumers and our environment consumers should be encouraged to buy less and buy better.

### **A Australian culture of copying**

As Adam Goodrum (Sydney Industrial Designer said in a panel discussion at VIVID recently ) if a school student is caught copying an answer in a test from the child next to them (who had studied and prepared for the exam) they would be removed from the exam and possibly expelled from school.

We are taught the entire way through our school career not to copy others work. Then we grow up and enter the real world and the law protects those who take another persons hard earned idea and uses it for their own financial advantage, with no effort – and allowed to use the original designers name and biography to support their poor result. This is not only an insult to the designer but to the intelligence of the Australian Consumer. Allowing it to be legal to pass-off on the credibility of the original design is absurd.

*FROM THE DRAFT REPORT: The Commission has sought to minimise unnecessary costs on rights holders. That said, the Commission's changes are intended to make those rights that are not delivering an overall benefit to the community more difficult to acquire in the future. These changes are designed to better target IP protection to instances where 'free riding' by users would undermine the economic incentive to create and disseminate inventions and works, and to limit strategic behaviour and gaming of the system. The Commission has made a number of suggestions for minimising any uncertainty associated with its proposed changes.*

I support the minimisation of confusion, cost and time frames currently involved with protection of a designers rights tot heir own work, concepts and ideas. Additionally I understand there is the need to protect against the “parking” of technology or ideas for the advancement of the community, science or the planet. I do not believe that the IP laws should be written to protect those seeking to abuse it – but rather have provisions to protect against abuse. (ie: large corporations buying out concepts and ideas and sitting on them them)

I am happy to be contacted to discuss my views at any time.

I believe this is the beginning of a much larger and truly important conversation if we truly wish to be the creative and Innovative Nation we can be.

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