

Dear Commissioners,

I make this submission in regards to the Productivity Commissions' draft paper on Intellectual Property Rights (the Paper).

The aim of my paper is to raise my concerns with some of the statements made in the Paper regarding Copyright protection, and the proposed changes to the Copyright Act 1968 (Cth). I understand that your paper covers a broad range of topics relating to Intellectual Property (IP), but I will focus on the impacts the changes will have on me and other writers. Of all the proposed changes in the Paper, the change to the term of copyright is the most fundamental principle – I want to retain ownership of all that I create for the rest of my life, and for a significant duration of my children's lives.

I will look at the idea of written work as an author's asset and compare it to other assets that people acquire via hard work and accepting risk; the protection afforded by the current Act is in line with Australia's main literary markets the United States of America (US) and the United Kingdom (UK) and if changed will only reduce Australia's standing against others who are members of the international Intellectual Property rights, including our major trading partner China; I will look at author earnings in comparison to claims about the irrelevance of long term copyright protections; and touch on the cultural value the literary arts contribute to Australia's national identity.

#### Written Work as Property

I am concerned with the Paper's assertion that IP is "...not like other physical property rights." (pg 3)

My husband and I own real estate, and we can own it until we: sell it, it is taken back by the government for a price, or we can bequeath it to a beneficiary of our choice when we die. The same goes for other physical items I own, such as jewellery. There is no law that places a limitation on how long I own these assets.

Going into debt is a risk that we have to accept to receive the benefit of owning our own home. We also accept the risk that our property's value will change over time; we receive the benefits if the value increases, or we carry the debt if the value decreases over time.

We service our debt by working. Over time we have increased our earning potential by accruing experience, undergoing formal professional development and accepting responsibility that comes with promotions. We do this so we can provide for our family, and pay off our home. I also do this out of a desire to do the best possible job I can.

I apply similar principles to my writing. I spend 3-4 hours every night studying, practicing writing, and taking courses to develop my skill. I have been doing this for the past seven years. The content I create is an asset. Not all of it will be worth any economic value and it won't be published, but I still own it. Anything that I sell will either depreciate or increase in value over time. Like real-estate, I should be able to access any equity resulting from my hard work, as well as carry the burden of the hours spend generating content that has no economic value.

The Australian Copyright Council makes the point that "...IP is a form of property. Under sub-section 196(1) of the Copyright Act 1968 copyright is recognised as a form of personal property and may be assigned, licensed or bequeathed in a will." (Australian Copyright Council, 2015)

The changes the Paper suggests will not only reduce writers' ability to earn from their work, it will limit the benefit their work over many years could potentially have for their families.

## **International Copyright Laws**

Under the United Kingdom's Copyright, Designs and Patents Act 1988 the duration of literary works is 70 years from the end of the calendar year in which the last remaining author of the work dies. (Fact Sheet P-01: UK Copyright Law, 2015)

Under the United State's Copyright Act of 1976 protection for literary works created on or after January 1, 1978 is ordinarily given a term enduring for the author's life, plus an additional 70 years after the author's death. (United States Copyright Office website)

In the case of one of our largest trade partners - China , the copyright term in most cases is the life of the author plus 50 years and is regulated by 'Copyright Law' in China. China is also a member of the World Intellectual Property Organization (WIPO). China has patterned its Intellectual Property Rights laws on the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). (Wikipedia.org Intellectual property in China.)

The Paper's comment that "The Australian Government should focus its international IP engagement on encouraging more balanced policy arrangements for patents and copyright, and reducing transaction and administrative costs for parties seeking IP rights in multiple jurisdictions," (pg 3) seems to be out of step with our main trade partners' laws on protection of copyright.

At the moment Australia's copyright laws are in line with the other countries that are signatories to the World Intellectual Property Organisation's Treaties (WIPO). (World Property Organisation's Webpage, 2016)

The Free Trade Agreement between Australia and the United State (AUSFTA) also states:

*Australia and the US have:*

*reaffirmed their membership of a number of key international treaties, including the TRIPS Agreement. (Article 17.1.2)*

*agreed to ratify or accede to the 'World Intellectual Property Organization Internet Treaties' (the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996) by the date of entry into force of the Agreement. (Article 17.1.3) (Guide to the Agreement, Chapter 17, 2004)*

The strength of Australia's copyright protection and Intellectual Property (IP) are stated as a bonus in the AUSFTA. The inclusion of the Intellectual Property Chapter, "Reinforces Australia's reputation as one of the world's leading countries in protecting and enforcing intellectual property rights." (AUSFTA Intellectual Property Agreement Information Sheet) In this chapter Australia agreed to "Stronger protection for copyright owners, including... An increased term of protection for copyright material..." (ibid).

## **Incentives**

The proposed changes to Australia's position on Copyright will leave our US and UK counterparts with more protection in a global market. Those who create content overseas will not look to sell their rights to Australia because there won't be any long term financial benefit for them to do so. Why would an author who has protection in the country where their work is published, want to sell to a

market that offers less protection, and the possibility of someone else making money from it after 15-25 years?

While trying to increase innovation and creative solutions, the actions suggested in this paper will have the opposite effect on Australia's creative industries. Those who create and innovate will have no incentive because of the lack of protection for their ideas, their designs, their messages and their writing. Instead, Australians who can create and innovate will direct their energies to overseas countries where they have the best possible protections.

The Paper assumes that all creators will still seek to publish, or the industry equivalent, into the market. The impact of reduced copyright on creators is a risk that the Paper does not examine. Nor does it estimate the loss to the economy of reduced creative output or no creative output. Australian writers also have the option not to publish their works.

### **The Impact of the Copyright changes on Writers' Average Earnings**

The idea that writers, as holders of IP, can command 'excessive royalties', is not supported by the research by the Australia Council. The average earnings of an Australian Author is \$12,900 per annum (Steger J. 2015). The tax free threshold \$18,200 for financial year 2014-15 and at the moment the poverty line for the December quarter 2015 is \$977.66 per week (approx \$50,838 per annum) (Melbourne Institute of Applied Economic and Social Research, 2016).

And if, as the Report says, that "... the commercial life of most works is less than 5 years..." (pg 17) and an author's average earnings are only \$12,900 pa then it's not logical to reduce the earning term of their work because it will reduce their average earnings even more. How does the cost of protection start to exceed the benefit of protection for writers?

The claim that the extension of the terms of Australian copyright under the US Australia free trade agreement, "... providing windfall gains to copyright holders with no corresponding benefit," (pg 17) is not a legitimate when annual author earnings are below the poverty line.

The distribution of the wealth within the copyright industries also seems out of balance when compared to the earning of those who create the content. The Australian copyright industries, in 2014:

*employed just over 1 million people (specifically, 1,000,167 people), which constituted 8.7 per cent of the Australian workforce;*

*generated economic value of \$111.4 billion, the equivalent of 7.1 per cent of gross domestic product (GDP); and*

*generated just over \$4.8 billion in exports, equal to 1.8 per cent of total exports.*

(Australian Copyright Council, 2015)

While these figures are based on economic benefits, the writers also contribute and build on our National Identity.

### **Contribution to Identity**

"This identity comes through the way we think about ourselves and our nation: the stories we tell, the songs we sing, our legends and our myths. From our literature and popular fiction, we can see that

Australia has built a narrative about who we are as a nation, and new chapters are being added all the time as the national identity is updated with each new era.” (Donovan, D. 2010)

It is through written works, that we grow in our understanding of what it means to be Australian. The changes to copyright laws, and reduced incentives for Australian writers to publish their work, will put at risk Australia’s ability to add to the national identity. Some works that have done this include:

The Happiest Refugee - Ahn Doh

The Fatal Shore - Robert Hughes

Voss - Patrick White

My Country – Dorothy Mackellar

Picnic at Hanging Rock – Joan Lindsay

My Brilliant Career – Miles Franklin

The Long Road to the Deep North – Richard Flanagan

The Man from Snowy Mountain – A.B Patterson

Storm Boy – Colin Thiele

The Man who loved Children – Christina Stead

The Book Thief – Marcus Zusak

For the Term of His Natural Life – Marcus Clarke

The Chant of Jimmy Blacksmith – Thoman Kennealy

Ice Station – Matthew Reilly

Breaker Morant - FM Cutlack

Anzac to Ameins - Charles Bean

Beneath Hill 60 –screenplay written by David Roach

Gallipoli - Peter Weir

These are all examples of the distinct and important voices that tell Australian stories at home and abroad. Australia would not commemorating the Centenary of the First World War 2014-2019 and the origins of Anzac Day if it wasn’t for stories conveyed in books and movies such as those above.

To me, a veteran of two wars, the idea of understanding what it means to be Australian is very important. At no stage did I fight for the “...long-term interests of both consumers and intermediate users.” I joined the Air Force to be part of an organisation that contributes to a greater good. I put my life at risk for the idea of what Australia stands for – a fair go, an irreverent sense of humour, freedom of speech, and a way of life where anyone who’s prepared to work hard will make a decent living. I didn’t, at any stage of my 26 year military career, consider the needs of “consumers and intermediate

users.” I believe I can safely say that all sailors, soldiers and airmen in the Australian Defence Force are the same.

### **Cultural Impacts**

“Got a bingle out in Broady this arvo...towies on site but as a result it’s chockers in that direction.”

Our vernacular is translated into US English when the rights are sold overseas. The amusing sentence above would read something like, “There was an accident off Broad Street during afternoon peak hour. There are tow trucks at the crash site and the traffic is blocked off down the freeway in that direction.” And voila! – we are making America great again! We are likely lose our spellings, our unique phrases and interesting quirks. We will become homogenized.

### **Summary**

In order for consumers to have something to consume, it has to be created. We writers create things - those things are stories whether they are fiction, non-fiction, plays, screen plays or articles. We work hard to improve our craft and produce quality output. Our work should be considered our property and we should be able to benefit from work that performs well over a long period of time. A writer should also have a say on who personally benefits from the wealth they could accumulate as a result of success.

The changes to the Copyright for writers are more likely to act as a disincentive to publish in Australia. If the protections surrounding our writing are reduced, and this places us on an uneven international playing field, we will look to publish where our stories are valued. We want to protect the little entitlement we have to make some money for our creative endeavours. Or at worst we will chose not to publish our stories at all.

We also have the option of not publishing if there are no attractive options available to us. Neither of these situations is desirable for the ongoing growth of our national identity or for copyright industries. Our industry contributes significantly to the Australian economy and growth in the creative industries is only likely to occur if you offer incentives.

Thank you for your consideration of my submission. I look forward to expanding on some of the points raised in my submission at the hearing in Brisbane in June 2016.

Kind regards,

Melanie Hill CSC

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