



INDEPENDENT SCHOLARS ASSOCIATION OF AUSTRALIA INC

ABN ~ 623 046 615 26
GPO Box 268
CANBERRA ACT 2601
Australia

E-mail ~ info@isaa.org.au
Web site ~ www.isaa.org.au

To: Intellectual property@pc.gov.au
cc. Copyright Agency Limited
From: Independent Scholars Association of Australia Inc.
Subject: Submission on Draft Report

We write on behalf of the Independent Scholars Association of Australia Inc, a national organisation of scholars who are working in all forms of research and creativity and who are for the most part not supported by universities or other such institutions.

We are among the Publisher Membership of The Copyright Agency Limited of Australia. We wish to support (i) the conclusions and recommendations in the Submission of the Copyright Agency and in particular the strong opinion in favour of no change to the 'fair dealings' principle which rightly now operates to the advantage of Australian writers and publishers; (ii) the length of time covered by copyright protection; (iii) the non removal of parallel import restrictions; (iv) and the importance of the Moral Right of the Artist principle in terms of integrity of the Australian creative community as well as in terms of economic value.

In supporting the Copyright Agency Limited, ISAA recognises and approves its submission points made on 'bi-lateral trade agreements whereby copyright content is accessible and content creators are fairly recompensed'.

- (i) We recognise that the possibility of change from Fair Dealing on Copyright in Australia to Fair Use derives from the Australian Law Reform Commission but the Productivity Commission Report on Intellectual Property is echoing the interpretation of the ALRC and the Digital Economy Discussion Paper in concentrating on the change to 'fair use' as benefitting 'some consumers (who) might enjoy reduced costs associated with using copyright material, which may foster the creation of new works (that is, the enhanced consumer surplus)'. We submit that this is not definitive and is aimed at 'the market' rather than the individual creator of the work. If there is an ambiguity about how and where the changes will have effect, then change is not warranted until such ambiguities have been clarified.
- (ii) The Productivity Commission Report on page 31 states that 'The Copyright term is excessive and imposes costs, for example new work in 2016 by say a 35-year-old author would not be available free until 2136'. **The Draft Finding 4.2** on page 117 acknowledges an optimal copyright term is hard to pinpoint but a more reasonable would be closer to 15 to 25 years than 70 years after death of the author. It is ISAA's contention that independent scholars regard their published works as remaining within their rights to make (or have made) decisions, which effect their own and their descendant's inheritance in them. It is therefore a Finding of The Productivity Commission that requires further consideration and consultation. **Draft Recommendation 4.1** on page 119 relating to reform of the Copyright Act to apply to unpublished works (diaries, etc.) also, in the opinion of ISAA, requires further consultation.
- (iii) The previous recommendation of the Competition Review Committee that the Productivity Commission has adopted relates to Parallel Imports. Draft

Recommendation 5.2. on page 132 relates 'The Australian Government should replace parallel import restrictions for books in order for the reform to take effect no later than end of 2017'. ISAA recognises that the Productivity Report provides background information on implications of parallel imports and previous decisions taken by various reviews but it is of concern to ISAA that the Report adds that the answer to any unwarranted disadvantage to Australian authors would be 'by direct subsidies (book prizes, Australia Council grants, etc.) aimed at encouraging Australian writing to continue to target the cultural value of books'. What other profession must stand with hand out to government in order to undertake legitimate professional activity and in face of government legislation, which affects them adversely. Obviously ISAA wishes this Recommendation to be reviewed after consultation with authors and author organisations.

- (iv) The acknowledgement of legislation within the Copyright Act 1968 for the concept of **'the moral right of the artist'** was a seminal advance in the ability of the individual to maintain rights and responsibilities in their own work. The Productivity Commission Report by implication places **economic value of the work** as preeminent in the mind of the author. In the opinion of ISAA this implication and its effects need to be redressed and revised in the final Report.

Finally, it is an observation of ISAA that sections of the Productivity Report which relate to individual authors and creators have either been misunderstood or misinterpreted if the publicity given in the major opinion pieces in journals and newspapers or public appearances in very public forums such as The Sydney Writers Festival are an indication. We would like to have the Productivity Commission widely release a **Fact Sheet** which covers the above four points well in advance of the final Report publication and available at the Public Hearings in June.

Dr Christine Jennett
President
ISAA
June 2, 2016