

Submission to the Productivity Commission on Copyright

In this submission I am going to refer exclusively to writers. This is what I am and this is where my interests lie. However, I believe my comments apply to all creators of copyright material whose income will be affected and reputations damaged if the protection of copyright is reduced.

My principle concern is with the arguments in favour of a dramatically reduced period of copyright protection. I realise that these arguments have not made it into the recommendations of the Draft Report, however my concern is that over time and if not rebutted, these arguments may slowly morph into policy.

To quote the Draft Report "*A number of studies have attempted to estimate a duration of protection where the benefits to holders are matched by the costs to users. **These studies find that a term of around 25 years enables rights holders to generate revenue comparable to what they would receive in perpetuity** (in present value terms), without imposing onerous costs on consumers.*"

My argument is with the sentence in bold. I am concerned that a significant number of writers would suffer financial loss if copyright was cut off at 25 years.

While it is true that the works of most writers have only a short commercial life, there is a small but significant few which have a long tail of financial returns. If this tail were to be cut off, it would mean that living writers would see their works exploited for economic gain by others with no further payment to the writer.

Children's book authors are one clear example: their books can remain in print over many generations of young readers. As each new cohort of readers discovers their popular and successful titles, there is new demand and the books are reprinted. A copyright term of 15 to 25 years would impact severely on these writers.

The draft report states that the commercial life of an Australian film is between 3.3 and 6 years. This may be true as a statistical average but ignores the much longer life which a significant number of films have as part of a streaming or download catalogue. The Commission's recommended 15 to 25 year period would result in services such as Apple iTunes still being able to offer movies like the original *Mad Max* (1979) *The Adventures of Barry McKenzie* (1992) and *Muriel's Wedding* (1994) and charge for them but without any payment to the Australian copyright holders.

A quick look at the program guides for any number of pay TV and many free to air channels will show that television programs have a life well beyond 25 years.

Streaming and downloading of films and television programs allows popular works to be re-enjoyed by older audiences and discovered by new ones.

In my own case, I still derive a significant part of my income from a television series, *Mother and Son*, the last episode of which was made in 1994. If a 20 year copyright period had been adopted, this income stream would have stopped at the end of 2014.

A shortened copyright period will deprive many writers of an important part of their income with the greatest effect in their later years. The amounts may be small in most cases, but they can be a valuable and consistent part of retirement income.

The Commission is concerned that the current term of copyright is too long and holds back further creative activity and also deprives many consumers from being able to access a wide range of works.

One example quoted is that the National Film and Sound Archives (NSFA) was prevented from including a clip of a 1960s television program on its website because of problems it encountered when trying to trace the copyright owners. Is this such a problem that a world beating restriction on the earning potential of writers should be introduced? I could suggest another solution. The NSFA could have used the clips and published a disclaimer similar to the following: "Every effort has been made to trace the original source for pictures contained in this book. Please contact the publisher in the case of any omission." These were the words used when ABC Books wanted to use a photograph which someone had emailed to me for the cover of a book from the Grass Roots television series. Despite many emails to the sender, neither I nor the ABC were able to find the copyright owner. This did not prevent the use of the picture as the basis for the book's cover.

A further problem with the Commission's recommendation is that it is in conflict with the Australia United States Free Trade Agreement (AUSFTA). During those negotiations, Australia yielded to American pressure to extend the then copyright term of the life of the creator plus 50 years to the life of the creator plus 70 years. Much of the pressure for this came from the MPAA, the Motion Picture Association of America. Those US film and television producers know how to wring every last cent out of their products. The MPAA is a very powerful and persuasive lobby in the US and the advice from the Commission that the Australian Government should attempt to renegotiate this part of the agreement has less than zero chance of success.

The effect of the Commission's advice, if adopted unilaterally, would be that when the copyright on Australian works expire after 25 years, all the successful works will be snapped up by the FAANG group of multinationals (Facebook Apple Amazon Netflix Google) but with no payment going to the Australian creators.

As well as financial considerations, the removal of copyright protection will allow the work of Australian writers to be changed and used in ways which were never intended and could easily lead to reputational damage. I can't give examples of where this has happened for the obvious reason that copyright prevents it at the moment. However, I have read many accounts of Australian writers being asked by American publishers to remove all traces of Australian idioms from their works in order to make them more palatable to an American public. At the moment, authors are able to decide whether or not to accept such changes. Without copyright protection, they will not. Far more than an idiom, the whole purpose, meaning, ethical foundation and the moral of a work can be entirely changed to suit the commercial needs of a multinational business.

One of the main purposes of government support for the arts in all its forms is to give Australia and Australians a voice in a highly competitive world. We are a small English speaking country and our works are easily overwhelmed and displaced by the sheer volume and market power of the American audio visual industries. I can find no mention in the Draft Report of this aspect of copyright protection.

The “transformative” value of works mentioned in the Draft Report, where a work is adapted, reinterpreted, restructured and/or rewritten, is most likely to be used in film and television by the FAANG group of businesses whose market power makes them dominant. Reinterpreting and “transforming” the works of Shakespeare or Moliere hundreds of years after their deaths is fine, but taking control away from Australian writers after a mere 25 years is wrong, will not benefit Australians, will transfer the control and value of works overseas and reduce Australia’s voice in the word.

It is to give protection to the reputation of both the work and its author that copyright protection extends beyond the life of the writer. It is not all about money.

The Draft Report does not make the case for any benefit which might result from such a dramatic reduction in the term of copyright. Instead, the report displays an ignorance of the real commercial life of some of the most enduring works of Australian writers which continue to give pleasure to many generations of audiences. The effect of such a policy on copyright would mean for our most successful writers a loss control over their work and a loss of income. I can’t imagine any other field of enterprise in Australia where success would be so curtailed.

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