

We take this opportunity to provide the Productivity Commission with a submission relating to elements of its Issues Paper – Intellectual Property Arrangements”. We have focused on matters relevant to our business and experience, in particular those pertinent to the educational publishing industry in Australia.

R.I.C. Publications is an educational publisher of 30 years’ experience in the Australian and international educational publishing area. The RIC Group of companies directly employs 35 staff in Australia and a further 40 staff in international locations. Indirectly, we contribute to the employment of many others in the education supply chain. We also contract over 100 Australian authors who contribute to the creation of the intellectual property under our imprint.

Our experience of publishing to Australian schools, directly to over ten international locations, and licensing materials into a further ten international locations, provides thirty years of ‘practice’ in managing IP. Our first task in this submission is to dispel some generalisations that continue to occur in the area of Intellectual Property and educational publishing.

The weakness of the comparison between countries and education; i.e. different methods/systems

Comparing systems in different countries, whether they be copyright, education or others can be fraught with danger. To make accurate comparisons, the writer must be very well versed in the way education is delivered, right down to classroom level.

For example, in UK primary schools, there is a predominant trend to programs of work; i.e. schools ‘take on’ a mathematics program from a large publisher. This program provides day-to-day direction and resources to allow for a very prescriptive pedagogy, with little room for teachers to deviate from that prescription.

Australia, however, has a very different approach. We have a national curriculum that schools are asked to use as a guide to educating their students. Lesson structures and resource use are then very eclectic processes where teachers match the curriculum requirements against the group and against the individual standards and needs of their students. This approach is pedagogically stronger than a prescribed approach but requires a varied and creative resource collection from which teachers can choose to meet the needs of their students. This process is very, very different from that used in the UK. It necessitates an involvement in

and management of copyright from multiple and varied sources while, in the UK, the teacher only has to manage the copyright and intellectual property of one publisher/product.

Comparing the Australian system with the UK and USA also presents a 'size factor'. How can we compare the provision of resources from Australian publishers servicing a population of 22 million people with countries that have 80 million and 300 million people?

The size of these overseas markets creates an economy of scale for publishers that greatly reduces their need for effective copyright laws and provides an industry that allows an independent educational publishing industry to flourish. They might prefer more aggressive protection of their copyright, but have managed to survive purely due to the size of their market.

Canada, with a population of 30 million, is more comparable and if we look closely here we see an educational publishing system that is serviced by:

- (i) multinational, foreign owned publishers; and
- (ii) USA publishers treating Canada as an additional state of the USA and providing resources created for another country's curriculum – using US English rather than the native English of Canada.

The potential impact of a move from current 'fair dealing' to a broad USA-style 'fair use'

If we want a true comparison Canada may indeed be the most effective system, but is it what we want for Australian students? We will lose our independent, Australian-owned publishing industry as a result and be serviced by large Multinationals who will not create product for Australia, as the market is too small, but will instead adapt product created for another country's curriculums. At a time when we are introducing and embracing an Australian education curriculum for the first time and have government recognising the need to resource schools, the move to a weak system of copyright and intellectual property protection is baffling at the very least. The introduction of fair use copyright legislation has seen the decimation of the Canadian educational publishing system over the past three years. Schools have interpreted fair use to mean free use and the end result is an education system that is having its resource needs serviced by the USA, with accompanying US English and US cultural influences. This has undoubtedly diluted the quality of education offered to Canadian students.

A 2015 PricewaterhouseCoopers report has identified the following effects of Fair Use legislation in Canada:

- (i) Loss of revenue to authors, visual artists and publishers of \$30 million;
- (ii) A 16% reduction of the economic footprint of the industry;
- (iii) Canadian Publishers exiting the market or seeking bankruptcy protection include Oxford University Press and Nelson Education;
- (iv) Further declines in sales are expected and have already occurred;
- (v) Fair dealing Guidelines are expected, over time, to result in the elimination of the Canadian K-12 Publishing industry;
- (vi) Will result in compromised content of variable quality for students; and
- (vii) Canadian SME publishers were and are the hardest hit by these changes.

In other words a move from current 'fair dealing' (with authors and publishers entitled to payment for most educational uses) to a USA-style 'fair use' approach would likely have a devastating impact on the ability of Australian publishers to stay innovative and competitive.

1: PWC, Economic Impacts of the Canadian Educational Sector's Fair Dealing Guidelines' (June 2015)

Generalisations across the 'education' spectrum; print is very much alive

The generalisation that digital delivery will take over the education resource market is often made. However, this position shows little understanding of how differently copyright materials are used from a Year 1 classroom through to a tertiary lecture hall. Our experience is that digital education has a far greater opportunity of becoming reality as the school years progress. This is largely due to the changing pedagogy that occurs in that movement from early years to tertiary.

The misconception is that everything is digital. But print is alive and strong in the current environment.

We need to be very careful before we bury the book in case we bury something alive. It is our experience that physical books are very much alive in the areas we publish to, and that the statutory education licences have supported the growth in the choices that teachers have, and that these choices support the National Curriculum.

Yes, the use of digital textbooks and the associated hardware is becoming very commonplace in tertiary and at higher secondary levels, as the nature of the education delivery and related student behaviour are a good match.

However, our experience is that print material is still a very important part of the learning process in early years and primary schools. Again, the pedagogy virtually demands it; and this is without considering the capacity of lower socioeconomic demographics to fund the hardware required for digital learning resources.

Put simply, a Year 2 teacher needs to know whether his or her students understand what is being taught before moving to the next stage of the learning pathway. Print material is still the best method of achieving this, notwithstanding the capacity of digital resources to support some elements of this process.

An example of this exists within our own group of companies. In the period 2005 to 2012, our company expended over 2.5 million dollars on the research and development of digital and interactive product. We created a significant portfolio of product which was well reviewed—but did not sell, simply because our core market—primary schools—did not have a level of demand that supported this product. In 2012 we elected to cease digital/interactive creation until the market was showing the required level of demand. We have yet to see this and continue to strongly publish resources in print format.

On the back of this experience it is clear to us that traditional copyright protection provided by current legislation and statutory licences is essential to the health of our business and other educational publishers in Australia. Further, that publishers such as RIC are staying with print publication should by no means be seen as an inhibition to innovate. Rather, publishers such as RIC remain positive and responsive to our customers needs and need strong copyright protection to provide the economic incentives to stay responsive. While the previous example shows the risk associated with innovation, our company has a strong list of success stories associated with our capacity to innovate in a small market, given the support of strong copyright protection and funding provided by CAL distributions. An example of this is how RIC developed a new product model in 2009 based around activity cards housed in easy-to-use boxes. This boxed product range has created a 15-20% increase in gross sales in Australia and Internationally. The cost associated with the product development was high and therefore the risk equally high for a small independent publisher. This, and other product innovations would simply not have been possible in an environment underpinned by a Fair Use copyright environment and the associated reduction in copyright protection and CAL distributions.

The undervaluation of intellectual property at the expense of the ‘users’ needs.

Today’s discussions on copyright and IP are often highly biased towards the end-user of the intellectual property. We must resist the temptation to believe uncritically that digital means free or cheap, just as we should reject the incorrect

assumption that has been put in various forums that everything on the Internet is (or should be) free.

The fact that IP is available in far more volume, far more quickly and in a wider range of formats than ever before, should not undervalue the IP of legitimate authors and publishers who are meeting a legitimate demand. Just because a person can write their own IP and publish it on an internet site in less than a day for non-commercial purposes is not justification for that person to be linked to or associated with authors and publishers who still spend time and money identifying need, then researching and writing valuable IP which is then tested by the ultimate judge—the commercial world. Conversely, associating this legitimate commercial group with the former, who has no desire or need for the commercial test, is no basis to argue for a change to copyright systems.

In a country where the Prime Minister is calling for ‘innovation’ how can we look to loosening our copyright laws and disincentivising our creative talent? Instead, we should be strengthening our laws to cover the high level of digital piracy that occurs at all levels. A ‘fair use’ approach simply says that the problem is too hard, so we will take away rules making to achieve a proper economic outcome from parliament, and give it to the courts. In the meantime, we would create an extended period of uncertainty that would stifle business innovation..

We move now to address specific issues raised in the issues paper.

Without addressing any question specifically, we wish to raise two main issues:

- (i) The role and purpose of collecting societies (CAL)
- (ii) The role of fair dealing and fair use Provisions

Collecting Societies

R.I.C. Publications has been a member of the Copyright Agency (CAL) for 25 years. We are also members of copyright collecting societies in various locations throughout the world. It is our experience that, without question, the CAL (Australia) is seen as the most progressive and innovative collecting society in the world and one which most others look to model themselves on.

The current system of licences in Australia in respect of schools and education is one that has proven itself over many years. The only parties that have a negative position are the ‘Schools’ (Education Departments) and that is purely and simply because they see it as an expense item on their budget that they would like removed. This is the same group of education departments and school systems who willingly signed the original agreements in 1990??. This is because they saw

the system of licences as an ideal way of managing copyright and copyright breaches within their jurisdictions. That 'sense of purpose' has since disappeared to be replaced by a need to 'trim budgets'. One is a logical approach and solution to what had previously been a complex problem. The other is a purely budgetary response to a 'number' that (both in absolute dollar terms and in terms of per student cost) is small and inconsequential to state budgets, has no meaning to a treasurer, but a lot of value to a classroom teacher.

R.I.C. Publications receives funds from the CAL distribution model. It serves a multitude of purposes. These include:

- (i) The Statutory Licences provide remuneration that compensates authors and publishers for what would have been copyright infringement in schools. What we need to remember here is that at the time the statutory licenses were being developed it was widely acknowledged by all parties that widespread copyright infringement was occurring in schools. Independently, we can confirm that our own product was widely copied outside of our own licence; something we had to spend significant time and money monitoring and educating—to little avail. Currently we do not have that distraction and teachers do not have any concern they may be breaching copyright provided they stay within easily applicable guidelines (one chapter or 10% of a book, whichever is the greater). A win-win situation for the IP owner and the IP user.
- (ii) The Australian market is small in world terms. We have fewer than 10 000 primary schools and, due to the specific nature of our product, that is the maximum sales we can make of some product lines. It is difficult to be innovative in a small market because innovation requires working capital as well as strong sales. The distributions provided by the statutory licence system allow us the scope to innovate. As such, the catalogue of products we bring to schools today is expansive and creative. Without the distributions provided by the CAL system we would not be able to provide for this innovation nor would we be capable of employing the creative staff we currently do—staff who are responsible for that innovation.
- (iii) Our independent authors all benefit from copyright distributions. Along with publishers, they have historically been victims of a significant copyright breach environment in schools. Since the inception of CAL they have received reward for this breach and as such gain compensation which allows them to continue their writing and innovation.

Fair Use/Fair Dealing

Our primary concern is that the introduction of a 'fair use' scheme will be interpreted as allowing free use of material where that use will be (and should be) paid for. Put simply, any system that allows schools to circumvent their obligation under statutory licences and/or make their own determination of the use of another person's IP is a step backwards in the educational publishing and resource area.

The current system of statutory licensing allows schools to copy outside of a publisher's licence. The cost per student is \$17. This is a simple, practical system, well administered by an independent body at a cost that is extremely low.

History shows us that when fair use legislation is enacted it allows the individual to make a subjective call. 'Education' apparently is the call that allows everything to be fair. We can look at Canada as the most recent example. In 2012, Canada enacted fair use legislation. Since that time, the following has occurred:

- (i) Statutory Licence income has been severely reduced or even disappeared for many authors and publishers, diminishing the creative pool.
- (ii) Canadian educational publishing has been decimated. *See Pricewaterhouse Report summary - page 2 of this submission.*
- (iii) Canadian schools no longer have access to resources created and published for the Canadian curriculum and Canadian culture instead they rely on resources created for another system and culture; a system which is basically second-rate.

In the USA, many educational publishers have closed their doors as a result of fair use legislation. Those that haven't have either changed product direction away from copyright materials or have been absorbed by several multinational publishing companies. The USA has a mass of population that will allow survival but not innovation in educational publishing, unlike a country such as Canada whose population prohibits that level of survival or innovation.

A History Lesson

In the 1970s the educational publishing industry in Australia was dominated by imported product from the United States and the United Kingdom. Australian teachers became expert at using resources with 'strange' spelling and teaching pond-life about a pond that existed in Yorkshire, not Kakadu. With the introduction of statutory education licenses, managed by CAL, the 1980s saw the emergence of an educational publishing industry within Australia—Australian teachers publishing for Australian teachers. It has grown to the stage where foreign publications and resources are no longer used at any level of significance

in our schools. Australia has a vibrant and innovative publishing industry that is a mix of large multinational and small to medium Australian-owned business.

The introduction of 'fair use' legislation will see the demise of that progressive and innovative industry which today meets the needs of all Australian schools. Based on the Canadian experience, schools will elect to ignore copyright notices and withdraw from statutory licence agreements, using a 'fair use' argument based on 'educational use'. With that demise of what is a vibrant industry we will see the large multinational countries step back in to fill the void; not with purpose written and published resources, but, at best, slightly adapted foreign publications, or, at worst, fully imported US and UK resources with no changes made to meet the needs of Australian children. Any fair use legislation will have removed the competition from within Australia that has forced these large international companies to publish country-specific resources.

Australia has an excellent education system. Great curriculums and great teachers need great resources. That package delivers some of the best and most innovative education found in the world today. Those resources have to be varied and diverse to meet the needs of a very diverse culture that thrives here. If we lose our educational publishing system, we lose the diversity and variety we enjoy today.

With trade agreements and the reduction of trade restrictions, we all see opportunities for Australian industry. Within the educational publishing industry we see little or no advantage at all. There already exists a vibrant and flourishing relationship between countries where product is licensed and republished. Our company publishes 10-15% of product, which originates as the IP of an educational publisher elsewhere in the world. Importing that product directly serves no purpose because in its raw form it has no relevance to Australian curriculums and culture. It has to be reworked by our teachers and publishers to present it in a relevant format. And the same applies in reverse. R.I.C. Publications publishes well over 250 titles internationally under licence to publishers in a range of locations. We are already maximising trade between countries.

A further comment on the detrimental effect of fair use legislation is that our partners in Canada and the USA are increasingly having less to offer us as they either fall by the wayside or elect to create non-IP resources in a market affected negatively by fair use legislation and decisions. These publishers, who have historically been strong resource publishers, no longer have the level of protection under copyright legislation that they need and should have, and have moved to create other product types that do not have an IP issue, such as classroom decoratives and stickers—hardly innovative but more self-preservation.

We must be careful not to judge all things by the same set of rules. Clearly, this is a common challenge facing all legislators in all areas. A fair playing field across country borders is a fine ideal. But some things can be best created only from within! If we are talking about the supply of grain across the globe, then it is hard to argue in a free economy environment against the best price for the same quality of grain—no matter where it comes from. We should not protect farmers who are uneconomic nor should we support countries that protect their own farmers. However, when we talk of educational resources we are speaking of a specific product that is created by Australian educators for an Australian curriculum and very diverse range of Australian students. This is not product which in its current form has any relevance to other countries, so we are not talking about comparative product across borders. If we take away or dilute copyright protection and fair compensation for copyright breach, then we take away the incentive to innovate, create and provide for Australian students and teachers and accept that a product from another country and culture is ‘good enough for us’. This is a step backwards to mediocrity for the sake of simplicity or, even worse, the fear of taking on the challenge of protecting our innovators and creators.