

Submission to Productivity Commission on Intellectual Property Arrangements: Termination of perpetual copyright in unpublished works

I write on behalf of independent public historians in New South Wales and the Australian Capital Territory (PHA NSW & ACT) to request changes in the current intellectual property arrangements. We specifically urge the repeal of arrangements which result in perpetual copyright for all unpublished material.

Unpublished material is essential to historical research and public historians who work outside the academy in such areas as the heritage industry, local government, corporate histories, etc., make extensive use of them.

Such material consists of primary source documents and includes diaries, journals, letters, sketches, drawings, recipes, notes and other similar one-off documents. They are generally held by, and accessed through, collecting institutions such as public libraries, archives and museums, but may also be in the possession of descendants of the original creators, held by collectors of such works, or be discovered by a researcher in unexpected or otherwise unplanned circumstances.

Such material - which is critical to the historical fabric of contemporary culture and in making important assessments about the past - is currently subject to copyright in perpetuity until published. For many of these unique records, it can be almost impossible to locate all the heirs (and, if they have died, all their heirs etc) of the material in order to obtain copyright permission to allow for publication.

Yet that is what is required if there is an intention to copy them, whether for display purposes such as public exhibitions, or to make them available to a wider audience by publication. The issues arising from perpetual copyright are in the opinion of professional historians an unnecessary impediment to historians' output. As such, they create a great hindrance to a range of public history work that would otherwise make a significant contribution to the Australian economy.

PHA NSW & ACT point out that perpetual copyright is a particular problem given recent technological changes. Many libraries and archives are committed to a digitisation program which would make essential sources available to a wider range of researchers. Such programs contribute to ensuring that Australia has an intellectual property system which is efficient and robust. Under the current system of perpetual copyright, much material cannot be digitised and made publicly available because of the extreme difficulty in locating copyright holders.

We understand that such perpetual copyright in unpublished materials either does not or no longer exists in comparable countries such as the United Kingdom, Canada, New Zealand, the United States and much of the European Union. The current system places historians working in Australia at a distinct disadvantage compared with their colleagues overseas - and for no

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national economic benefit. We further understand that removing perpetual copyright does not violate any of Australia's international trade obligations.

I therefore request that you consider revising the copyright legislation to ensure that published and unpublished works are subject to the same copyright rules, that is, to the same period of time, such as the life of the author plus seventy years.

Thank you for your consideration of this matter and we look forward to hearing that this vexatious and unnecessary restriction is removed from Australia's intellectual property arrangements.

Yours sincerely

CHAIR

PROFESSIONAL HISTORIANS' ASSOCIATION NSW & ACT

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