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I am a writer, a journalist, a researcher, treasurer of the Journalism Education and Research Association of Australia (JERAA), and secretary-treasurer of the Australia and New Zealand Communication Association (ANZCA). Nevertheless the opinions expressed here are my own and not intended to represent either JERAA or ANZCA. I wish to object to the recommendations you made in your draft report on Intellectual Property Arrangements. I derive some income from copyright in my own work and in the work of my father, which I inherited. JERAA publishes a journal whose contributors assign their copyright to the association so that the funds generated might benefit members and the wider community.

Copyright legislation should provide a firm, predictable and reliable platform for authors, publishers and the public, providing a set of rules that links them. It plays an especially important role in a multicultural society.

My concerns about your proposals are as follows:

Life of Copyright

I find your proposal to reduce the term of copyright to 15 or 25 years alarming, patronizing and insulting. I consider I have the right of ownership of my work and am able to licence or assign it in ways that I determine. If my work automatically went into the public domain after a relatively short period of time, regardless of my wishes and needs, I would suspect that society had devalued my right to determine the fate of my work through a high-handed process beyond my control.

While on this subject, I would like to air my long-held belief that tying the life of copyright to the death of the creator is intrinsically unworkable. Unless one is prepared to keep up to date with the biographies of the various people whose work one wishes to use, it is inevitable that one will commit a breach sooner or later.

As an example, the person who wrote *Desiderata,* Max Ehrmann, died in 1945, well before it became popular. In 2015, the 70 years was up and suddenly he was credited with writing it. Coincidence? In the meantime *Desiderata* had appeared on posters, tea-towels, beer-mugs, etc! The story had been circulated that it came from an old tombstone in New England and therefore copyright was not an issue. There would have been many people who were technically in breach of copyright. *Desiderata* was originally published in 1927 with Sally Sturman as the illustrator.

I think that the 70-year life is realistic but it should date from the date the work was created. *Desiderata* would have gone into the public domain in 1997, which would have been more sensible. I think that the lifespan of a created work should approximate the lifespan of the average person and 70 years appears to me to be appropriate.

Rights of Employed Writers

Changing the copyright legislation provides an opportunity to clarify some issues that cause uncertainty among writers. The first is whether or not an employee automatically assigns copyright to the employer by the very fact of being an employee.

This is particularly important for journalists, many of whom assume that their employer, for example the publisher of a newspaper or magazine, is automatically granted ownership of the copyright of all material produced by all employees. The alternative view is that the employee grants an exclusive conditional licence to the employer to publish a work once, at which point the writer regains control and full ownership. As freelance journalism becomes more accepted as normal practice, journalists need clarification on this issue.

My view, which I put into practice when I worked as a magazine editor, is that the employment status of the writer is irrelevant. The writers own the copyright in the published works regardless of whether they are paid employees or freelancers. Of course, if a specific assignment agreement, perhaps part of an employment contract and signed by the writer, is in effect, then copyright remains with the publisher for the full life of that copyright.

Exclusive Licensing on the Internet

The internet has produced two additional areas of doubt. The first is the length of time that an implied licence remains exclusive. Daily newspapers, magazines, and other journals are now archived and accessible by way of the internet, potentially in perpetuity.

The question arises as to whether or not this prevents the writer from re-purposing the work, for example into a collection of opinion pieces or stories for republication. Does the fact that the work is available, albeit by way of a subscription or pay-wall, prevent such republication? Amended legislation should clarify this issue.

My view is that ownership reverts to the writer at the end of the publication cycle, that is, 24 hours in the case of a daily newspaper up to three months in the case of a quarterly magazine. Continuing to display the work beyond that period, and sometimes charging for access to it, should be the subject of a separate copyright agreement between the writer and the proprietor of the newspaper or journal.

Republication via the Internet (2)

The second area of doubt concerns republication. When a writer submits a work for publication on the internet, clearly a licence to publish is granted to the proprietor of that publication. Readers can seek it out, perhaps pay for it, and read it on their computer screens at home or at work. If the reader then decides to download the work as a printable file, what is the legal status of that file?

In my view, the process of downloading constitutes republication. It should be the subject of a separate copyright agreement and perhaps the payment of a fee. Allowing readers to download a work is, to my mind, an identical process to photocopying the work in a library. In the case of the library, of course, there is a system of licence fees and photocopier surveys in place that goes some way to providing the original writers with a financial reward over and above what they might have been paid for the original contribution. By allowing downloading without an additional agreement, internet publishers may be giving away something that they do not actually own.

Parallel Importation Rules

I see no reason to change the current arrangements, contrary to the recommendations of your interim report. Trade-marked and patented goods are different and probably require a

different regime. For printed material, I believe that the current system provides a good balance between interests of the consumer and the interests of writers. It has sufficient safety nets in place for writers to retain control of their income and their rights while still providing a level playing field for them and overseas writers.

Currently, if a publisher has exclusive rights, booksellers can only buy a book from that publisher, provided that the publisher makes it available quickly. Otherwise, the bookseller can buy the book from anywhere. Furthermore, there is no effective geo-blocking of books as far as readers are concerned, contrary to your interim report. Under the current rules, any reader can buy any publication, from anywhere, at any time.

Fair Use

I am opposed to the proposed replacement of the current "fair dealing" copyright restrictions with the United States' system of so-called "fair use" without considerably more investigation and justification than you have provided to date.

Most parties, including writers, seem to support the current regime of exceptions to copyright while claiming that, if the US system is adopted, writers would lose income and the Australian publishing industry would be less viable. It is also claimed that the US system would require writers and publishers having to initiate and pay for legal action if they found works being copied freely but unfairly. This conjures up an image of a queue of impoverished writers attempting to represent themselves in court against well-resourced international publishers – an image that might be comical if it wasn't so tragic.

These claims are supported by reports from Price Waterhouse Coopers and others as mentioned in your interim report. If your report is adopted at this stage and "fair dealing" is replaced by "fair use", it would amount to an experiment with Australia's culture, a gamble with unjustifiable downstream risks. My suggestion is that the current "fair dealing" exceptions be retained as an interim measure while the claims made in these adverse reports are investigated. This investigation should include a detailed monitoring of developments in Canada and other jurisdictions where the US system is in place, including the US itself

I trust that you will take my views into account when considering your final report and I am looking forward to reading that report.

Yours faithfully,

Jolyon Sykes