

Intellectual Property Arrangements
Productivity Commission Draft Report
April 2016

Submission from Dr Inga Simpson
3 June 2016

RE: PROPOSED REMOVAL OF COPYRIGHT PROTECTIONS FOR AUSTRALIAN
AUTHORS

I would like to comment on the Productivity Commission's April 2016 Draft Report into Intellectual Property Arrangements. In particular, I would like to address the proposed reduction of copyright term for creative works, the adoption of a "Fair Use" model for copyright, and the proposed repeal of parallel importation restrictions (PIRs) for books.

I am the author of *Mr Wigg* (2013), *Nest* (2014) and *Where the Trees Were* (2016), published by Hachette Australia, and Blackfriars (UK). I have two further books contracted with Hachette Australia, due for publication in 2017 and 2018.

Mr Wigg was shortlisted for an Indie award, and longlisted for the Dobbie award. *Nest* was longlisted for the Miles Franklin and Stella Prize, and shortlisted for the ASL Gold Medal.

As a developing literary author whose works focus on rural Australia and natural landscapes, I feel that voices like mine are at risk if the Commission's proposed changes are adopted by government.

A flawed report

It is not clear why books are mixed up with patents and pharmaceuticals in the Commission's report, but the fact that they are suggests a lack of understanding of the cultural and economic value of creative works, and of the Australian book industry.

The draft report appears to disregard facts, figures and arguments submitted by those who *do* possess knowledge of the industry.

The Commission's draft report does not include any current price comparison analysis, but rather, relies on limited and out of date data collected for its 2009 report.

Although the current government has stated that it will not adopt the recommendation that the current term of copyright for creative works be reduced, the fact that the Commission has included this recommendation calls into question the objectivity of the report, its economic rationale, and the basis of its findings.

The emphasis of the draft report is on *possible* short-term reductions in book prices for consumers, rather than the protection of Australia's creative capital, or strategies to ensure and enhance long-term growth and innovation within the book industry. This approach seems contrary to the current government's commitment to jobs and growth, and fostering innovation in small business and local industries.

The draft report does not reflect contemporary research, which regards creative capital as a significant economic driver of the future.

The draft report does not adequately measure the economic and cultural value of creative works, or the publishing, printing and bookselling industries, or related industries such as writers festivals, writers centres, and university creative writing courses.

I can find no evidence in the report that the proposed changes *will* result in cheaper books prices for consumers. Indeed, the report appears to ignore evidence – New Zealand's experience, for example – to the contrary, that removing copyright protections will *not* result in significantly lower book prices but *will* gut local writing, publishing and bookselling industries.

As a representative of the Commission acknowledged on 20 May, in a panel discussion at the Sydney Writers Festival, the proposed changes are an economist's experiment, based on limited data, with the Commission unsure what the impacts on the market, book industry, and Australian writers will be.

Negative impacts on Australian writers

The draft report claims that there would be 'little or no change in the incentives for producing works by authors.' It is not clear how the Commission reached this conclusion. The combined impacts of the report's recommendations would see Australian writers giving up their intellectual property rights, and incurring a loss of income through reduced local and international royalties, reduced territorial licencing opportunities, reduced lending rights

earnings, and reduced advances. The Commission's recommendations, if adopted, will also result in reduced publication opportunities for local authors.

Australian authors are already poorly paid. I currently earn around \$20000 per year from my writing – above average. But I am not covered by minimum wage protections, I do not receive sick leave, holiday pay, or superannuation. Without a salary, I cannot take out a home loan. Copyright protections are *all* I have – the right to own and control my creative works, and to generate income from them.

Everything about writing takes a long time. For me, two years to write and edit a book for publication, and a good part of another year to promote the book. My advances have been between \$7500 and \$9000 – above average for literary novels. It takes at least a year after publication to earn out that advance, and see royalties begin to come in. Another year for ELR and PLR payments to begin to trickle in. My first novel, *Mr Wigg* (2013), has sold over 10000 copies – above average for an Australian literary novel. *Nest* (2014) has now sold about 5000 copies, and *Where the Trees Were* (2016), over 2000 copies. It's a slow build.

I make the remainder of my income from journal publications, writers festivals, teaching and mentoring. These income opportunities are also likely to contract if the Commission's recommendations are adopted.

I have invested over ten years in my writing. I completed a PhD in creative writing while working full time. After three successful novels, and with two more books contracted, I am only just at the point where I am able to support myself from my writing and related activities. In 2015, I was lucky enough to receive a grant of \$15000 from the Queensland Government to develop my next novel. My total income, however, is still well below the average wage.

My publisher has also made a long term investment, not only by publishing my works, but by promoting them, raising my author profile, and funding publicity tours, festival attendances, and professional development opportunities.

Reducing the term of copyright

The Commission's draft report attempts to characterise writing as a short term game, claiming that 'literary works provide returns for between 1.4 and 5 years on average' with 'three quarters of original titles ... retired after a year and by 2 years, 90 per cent of originals

... out of print'. These figures are not supported by facts. Festival and promotional opportunities continue for at least a year, and awards rounds another year, keeping many books very much in circulation well past the 2 year mark. The full backlists of hundreds of Australian authors, such as Tim Winton, Charlotte Wood, Kim Wilkins, Alex Miller, Michael Robotham, Kate Forsyth, and so on are all still in print decades later. It is in publishers' interests to keep all of an author's books in circulation to recoup on their investment. The advent of ebooks has made this even more viable.

If the term of copyright was reduced from 70 years after an author's death to 15-20 years, Tim Winton would cease earning royalties on *Coudstreet*, and others would be free to profit from his creative work.

Similarly, my capacity to earn royalties from my books would be significantly reduced. Without access to these royalties on my body of work in later life, I would be forced to rely on a tax-payer funded pension. Writing would no longer be viable.

Shifting to "Fair use" model on copyright

In this digital and global age, and having witnessed a number of my fellow writers have their books stolen by Google's digitisation project, without any compensation, it would seem that copyright law needs to be strengthened in favour of Australian creators, rather than weakened.

Proposed removal of PIRs

The proposed removal of PIRs relinquishes my intellectual property rights over my creative works, without gaining any reciprocal right.

This removal of territorial copyright would reduce my income opportunities from overseas publication rights, and reduce overseas royalty rates.

My Australian rights would also be devalued, resulting in lower advances and lower royalties for future books.

Removing these territorial rights would reduce the incentives for Australian publishers to publish Australian books. As a result, the Australian publishing industry will shrink, and

surviving publishers would be operating on reduced margins. Those reduced margins would be reflected in reduced author advances and royalties for my future Australian books.

The local bookselling industry would also shrink. I rely on hand-selling from Australian independent booksellers. My publisher and I have worked hard to build those relationships. Without their support, or indeed, their existence, I would sell fewer copies of my books, and therefore earn less income.

As the market is flooded with cheap copies of the latest bestseller from the UK or America – the equivalent of *Fifty Shades of Grey* – Australian voices like mine would not be able to compete in the new supermarket environment.

With these reduced margins, and reduced opportunities, even if I am lucky enough to continue to be published, the reduction in my income will mean that it is no longer viable to write full time – or to write at all.

Offsetting author's losses with public funding

The draft report proposes that reductions in writers' income be offset with government subsidies – grants and literary awards. This suggestion is at odds with the report's "free market" approach, and ignores the fact that funding to arts bodies has been steadily declining. I note that the Productivity Commission's 2009 report recommended an inquiry into literary grants and awards *before* removing PIRs. This has not occurred. And since 2009, the current government has drastically cut arts funding.

The suggestion that writers rely on grants and prizes to fund their writing is also unrealistic. Even when adequately-funded, the Australia Council for the Arts, for example, can only fund a very small proportion of the applications it receives each year.

Winning literary prizes is even more subjective, with even slimmer odds. Only a handful of writers are awarded prizes each year. Even the most lucrative of those prizes, when spread out over the time taken to write, edit, and publicise one book, is less than the average annual income.

I don't want handouts. I don't wish to have to rely on political favours or scant and vulnerable public funding. I want the copyright on my creative works, my intellectual property, protected. I want the opportunity to write and publish my books, here and overseas,

and to receive fair payment. I want to make a contribution to Australian literature, to Australian cultural and intellectual life, and to be recognised for that contribution.

A loss of Australian voices and diversity

Australian writers are currently achieving recognition at home and overseas, winning major international prizes (eg. Richard Flanagan's *The Deep Road to the Narrow North* the Booker, and Michael Robotham's *Close Your Eyes* the Golden Dagger). This builds on a rich literary history.

The Australian writing scene is vibrant and increasingly diverse, beginning to better represent the many voices of Australia. Indigenous Australian writers, such as Tony Birch, Bruce Pascoe, Melissa Lucaschenko, Ellen van Neerven, and Alexis Wright, are reaching local and international audiences, achieving literary recognition, and invited all over the world to participate in writers festivals. Supported mainly by small publishers, the voices of our Indigenous Australian authors, and those of emerging and minority authors, are particularly at risk if the Commission's recommendations are adopted.

Conclusion

Australian literature is an integral part of our culture, economy and national identity. This has been enabled by government policy, which has valued and protected our cultural capital.

The Australian book industry – writers, publishers, printers, booksellers – is essential for the continued growth of Australian literature. It is an industry in pretty good shape. More than 7000 new titles are published each year, bringing in \$2.2 billion dollars of revenue. The industry has demonstrated its resilience and capacity for innovation, surviving the GFC, the advent of eBooks and offshore online bookselling. The industry is not asking for subsidies or handouts, just continued copyright protection – to foster an environment in which Australian writing, publishing and bookselling can continue to flourish.

Faithfully,

Inga Simpson