

A response from an Author-Publisher to the Intellectual Property Arrangements Issue paper

To the Productivity Commissioners

Dear Sirs and Dear Madams,

After reading the Intellectual Property Arrangements Issues paper, I am writing to raise a few points of concern: regarding the proposed removal of the parallel importation restrictions; and, in particular, the proposed reduction in copyright from the perspective of the newest innovation in the publishing industry, namely author-publishing.

I shall start with the proposed reduction of copyright, which is of prime concern to Australian authors.

Australia currently is subject to similar copyright laws, in effect, to Great Britain, in that the current copyright protection for authored works is seventy years after death of the author, for a published work (which is the type I am most concerned about here; and shall focus on here for the sake of brevity). What is proposed is reducing the length of copyright protection to 15-25 years after first publication of a book (or any published work, such as an article). This is more than a substantial change; it takes away the copyright protection that living authors have and the ability of authors to have control of their published works and to make money from them.

There are many valid arguments against this, and I could make some, but for the sake of brevity here, I shall make a few quick relevant points. This change would disadvantage authors born in Australia. It would likely stop many authors from publishing and prevent many young people from considering being authors, and publishing books. Why? Because there would be no point if they were going to lose the rights to control the work they have created, and to make money from it. It would unfairly disadvantage Australian authors.

Yet it would not affect authors who are, for example, of British nationality living in Australia. For the dual-citizens here, they can have recourse to, and copyright protection of their works from their home country that they were born in.

United Kingdom Copyright Law

A work qualifies for copyright protection, if made after 1 June 1957 (the date on which the Copyright Act 1956 came into force), if its author is:

1. a British citizen, a British dependent territories citizen, a British National, a British subject, or a British protected person.

[From the United Kingdom Copyright, Designs and Patent Act 1988].

Since the Copyright Act 1956 came into force a work qualifies for copyright protection (under the British copyright law) by its author's nationality, not its country of first publication.

Whether I live here or in England, this means that I, or someone such as myself, would be able to still have the 70 years copyright protection of our works, and to control our own works, and make money from them; whilst our Australian colleagues and friends would be in a position of having their works taken by whomsoever wished, and having to see them being used by other people in ways they could not control, including seeing their works making a profit for others, and not being given any royalties. As it is, Australian authors make on average under \$13,000 per annum, on recent figures, less than authors in many places.

This would be very unfair, and would handicap Australian authors and culture. Australian authors would not have the same rights that their fellow authors from Great Britain have, and if an author has dual nationality, they will likely chose to align with the nationality that offers them better copyright protection as that is their means of livelihood.

Dual Nationality Author-Publishers in Australia

Authors of British nationality could and would retain their copyright in Australia and their rights to be paid if their work is used here.

As an author-publisher, who is in Australia using global forms of printing, I can if I wish chose to register books in Australia, or in the United Kingdom, where I was born. As an author-publisher who is starting to publish books (paperback, hardcover and ebooks) the rights of publication are of key importance. Britain has territorial copyright protection, the kind that Australia now has, which means that if the publisher makes their books available for sale in the first month of publication that booksellers are required to buy the books from the publisher. So far I have been selling my books via Facebook, and in online bookshops, on Amazon. But I have been planning to soon put my books into distribution, as I have several I am preparing to publish, and sell through the traditional channels, in Australia. But if these changes were brought in that would mean that because my books are published globally, rather than buying from my small business, a publishing house, booksellers in Australia could order them from the online retailers where they are also available around the world. Even though I am the publisher and the author, I would lose the prerogative to have my books bought from me as author/publisher.

This would disadvantage new author-publishers who are trying to make new innovative and productive ways in Australia. If these proposed changes were to happen I would most likely have to relocate my publishing business to England, where there is still a strong copyright law that protects the author-publisher.

This would mean that the innovation and productivity that my business has to bring to Australia would leave; and that the new author-publishing movement, which is beginning to start up here, in Australia, might well founder, and move overseas. As it is I know of several authors and author-publishers who have left.

The author-publisher movement started up, recently, as an innovative response by authors, to the changes and threats brought by online publishing, where the advent of ebooks (which potentially never go out of print) meant that the rights to control their books, their copyright, did not revert to the author, as it does in traditional publishing, after the length of contract elapses, or the book goes out of print, if for example, it is not selling; and an author does not renew the contract. Ebooks cost a publisher nothing to produce and keep online, yet the publisher may not be investing resources into marketing an author's books and they may not be selling. If the book is an ebook the copyright might never revert to the author. Because of their potential loss of control (to market their own works and to also make money from them) some authors decided to publish their books and take on the control of the full publication process, including in ebooks, and print, and the marketing. The new forms of digital printing and publishing software make it possible for authors to be publishing entrepreneurs, they can either hire professionals to do the design and typesetting, editing, and marketing, or take on aspects of this themselves; and pay for the printing and online shops. This new author-publishing movement is just starting here. If these changes were to go ahead it would be a major disincentive to this movement of innovation and productivity.

Conversely, if the current territorial restrictions stay in place, and the current author copyright stays in place, there is every reason to expect that Australia could become a world hub of new publishing. Already I have made connections with authors overseas who could publish their books here first. With enough interest and support, new publishing in Australia has the potential to reverse the previous trends of the major publishing houses being located outside Australia and Australian authors' fears of losing their cultural identity by having to publish outside Australia. Who knows what the major publishing houses of the next decades will look like, they will be using the latest digital technologies, which the new author-publishers are pioneering and using, so it makes sense for them to be encouraged to stay here- this could be done with government subsidies based on their book productions (much like the model of university subsidies for their research publications). However the current rights would need to be in place to protect and encourage authors and publishers to be productive and base their businesses here.

Access

My final point is to do with "access" and the argument that disabled people need a special access to publications, that universities and libraries do not seem to wish to, or be able to, pay for- which I would say is a fallacious argument for the reduction of copyright, or replacement of copyright exception with fair dealing, and would disadvantage authors, through loss of income; and authors could be very much helped by income from being paid for the use of their works.

A Solution

The solution to this is for the universities libraries and other institutions to pay, for gaining this access, and to make many more copies, and to have a subsidy to

pay for the books and articles, if necessary. A subsidy for paying for books and copying of articles, should be given to universities and libraries, to pay for more books, to pay for them to be converted to audio books, and to pay for the costs of authors' copyrighted works, and it should be a large subsidy. This would benefit everyone- the libraries would be able to pay to copy more books, articles and chapters for course readers, and for special needs reading, the students and public would benefit from having more materials available, and so would authors- the most impoverished of all highly skilled, qualified and creative people, would benefit from being paid more royalties for book sales, and payments for the printing and use of their works, in course readers, recorded as audio books, and made available in other forms.

These arguments are not made for myself, as I said, I am not directly affected by the changes in the copyright laws, proposed, as due to my dual-nationality I am protected by British copyright law, and so I would not lose my rights, and control of my works. I can relocate to Britain if I have to so that I can continue writing and publishing. But, I am writing this in support of my Australian friends, and fellow authors, and those whose works I am publishing, and could publish, if they will write them, I ask you to please not make these unfair changes that would have a catastrophic effect on Australian literary culture.

I have children who are now young adults, both of whom are published authors, as are many of their friends. I am very concerned about the effects the proposed changes would have on the new cultures that they are actively a part of creating. The younger generation needs the copyright protections, the right to write and publish that their parents have had, and may have become so used to, that they take for granted; or they may well leave. The effect would be that our thriving innovative arts culture in Australia would lose hope, and our literary and cultural identity would be diminished.

Thank you for considering my comments.

Ruth Skilbeck, PhD
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