

Objections

Having briefly read aspects of the report relating to fair dealing, we would strenuously and rigorously oppose extension of any capacity to loosen copyright through so-called Fair Use provisions whereby allowing schools and institutions to copy sections of our books by photocopying, digital whiteboard or any other method of digital duplication for use in schools and/or institutions in multiple sets as part of the curriculum, or on electronic whiteboard or any other transmission media such as tablet or computer.

Furthermore we would object strenuously to any of our existing books and publications being made available through so-called “internet intermediaries and content dependent industries”, otherwise known as “global content regurgitators” having any unauthorised access to our books and publications. Furthermore we would strenuously object to a copyright period of only 15 years which would destroy our business.

Thirdly and probably even the most important is the presumption that a return on intellectual property investment should be recovered within a period of 15 to 25 years and from that point onwards content holders would lose their rights to copyright. If so this is retrospective appropriation of property and should be vigorously condemned. If any such provision is to be implemented it should only be prospective so that anybody creating content clearly understands the limitations of the proposed changes on their intellectual endeavour.

Justification for Objections

As a small Australian self-publishing organisation, we have developed our intellectual property in a number of publications which are available on the open market for individual purchase. Development of a publication involves upfront costs in excess of \$20,000 per title, employing Australian illustrators book designers, printers, as well as Australian based distribution agencies. All of our books are authored, designed, illustrated and, printed in Australia.

In order to recover our capital cost and to provide a reasonable economic return to the:

- book authors for the intellectual property,
- book illustrators for their intellectual property in the illustrations,
- book designers for the intellectual property in their layout,
- Australian printers for the production of high quality colour printing and
- our various book distributors for the marketing and distribution of our products across Australia,

in both in Australia and internationally, we need to preserve our intellectual property in copyright for the foreseeable future not constrained by some arbitrary period of 15 years.

The pricing of these products has been kept low on the presumption of volume purchase to make these products as accessible as possible to end-users on a reasonable cost recovery basis. Some of our titles involve inventory investment over more than 5 years in order to get

Secret Girls Business Partnership

2 June 2016

Submission re-Fair Dealing and Possible Changes to Copyright Protection

economic long run printing cost economies, and the whole process involves significant financial risk as a consequence.

The pricing of our books reflect the opportunity cost of each element of the production process from the original intellectual property, design, illustration, printing and distribution mechanisms.

We are aware of examples where organisations have copied our material in breach of copyright and action has been taken to cover this situation. However it appears to us that the proposed “Fair Use” provisions outlined in the report would enable schools and institutions to copy chapters of our books for use in the classroom and as such would have a material effect on the economics of distribution especially if the only protection apparently available to copyright holders is legal action which for small organisation like ourselves would be impractical.

We have already had one instance where a large book publisher has appropriated part of our copyrighted trademark material and we were advised that legal action could easily cost between \$50,000 and \$100,000, a situation which for our small business would be economically impossible.

Accordingly we are strongly in favour of restricting Fair Use access to publications to no more than one or 2 pages for illustrative purposes, and for a total prohibition on electronic distribution of our copyright material in any form whatsoever, be it electronic whiteboard, tablet or computer or any other electronic media, without our express permission and subject to specific licensing requirements to cover the opportunity cost of our investment in this material. Furthermore we have grave concerns that any electronic translation of our materials runs the risk of content being changed without our authority, or the permissions of the various copyright holders with whom we are contracted.

In addition we are strenuously opposed to any of our books and publications being made available on so-called “internet intermediaries and content dependent industries” without an appropriate royalty payment of at least 40 % of the current recommended retail price to reflect the opportunity cost of creation and design, for each and every access to this material. Any such payment would be for us to fulfil our legal requirements for the copyright material under our control under existing agreements relating to both copyright and royalty obligations

Secret Girls Business Partnership

2 June 2016

Submission re-Fair Dealing and Possible Changes to Copyright Protection

Furthermore any such access would have to be totally controlled to prevent subsequent redistribution and copying by some form of direct control over access to prevent re-use operating within the framework of an appropriately controlled access royalty collection and reporting framework.

We are deeply concerned that incorporation of fair use provisions in conjunction with the free trade agreement between Australia and the USA may enable appropriation of our intellectual property in the USA and possibly elsewhere without effective rights for compensation or cost-effective opportunity for redress.

Submission re-Copyright Term

This turgid and voluminous report, with all sorts of discussions relating to periods of copyright considered from the shortest at 15 years up to the death of the author +70 years is indecisive without reaching a definitive conclusion.

In the case of the books published by our small book publishing company, a 15 year copyright term would destroy the economic validity of our primary publication which has been in publication for 13 years and sells consistently on a commercial basis. This book provides ongoing royalties to the illustrators and authors, and provides employment for the Australian printers (who regularly reprint this book every 12-18 months in volumes of 10-12,000), and the Australian distribution agents and booksellers throughout the country who sell this book.

3 of our 7 book titles have an aggregate print turnover of 10, 000 to 12,000 copies per annum, with each of these reprints occurring within Australia using Australian printers. Allowing a third-party to appropriate our intellectual property without consideration after 15 years would destroy the commercial viability of our business as our first title and most successful title would hit this threshold within the next 2 years.

As each of these products is commercially viable, there is no argument for handing over this intellectual property to anybody who wants to appropriate these effective and commercially successful products after 15 years of publication, and the very success of these publications would make them a prime target. It should be noted that these publications cross subsidise a range of other publications provided below cost to address issues in the area of children with disabilities. This cross subsidy is an altruistic decision made by the authors and is only possible because of the commercial success of the primary publications. It should also be noted that the contribution margin from these successfully commercial products in aggregate funds the development of new titles in the health and welfare space on a basis that could not otherwise be economically justified. The economies of scale in this area are demonstrable and allowing an arbitrary third-party to cherry pick our titles after 15 years of publication would be economic and social vandalism.

Secret Girls Business Partnership

2 June 2016

Submission re-Fair Dealing and Possible Changes to Copyright Protection

If the commercial viability of “Mickey Mouse” and “Donald Duck” can be preserved for 70 years after the death of their respective creators, what is good enough for the duck and the mouse is good enough for us provided our books remain in print and remain commercially available at the discretion of the authors and publishers.

Apparent Retrospectivity.

It would appear that any substantive change to copyright entitlements will have a retrospective effect because imposing a shorter finite period of copyright entitlement would absorb any existing period of operation without prior notice.

In the case of our primary and most valuable publication, it has been in print for 13 years, and the authors have assumed a prospective life of decades in order to obtain a return on their aggregate investment. If a 15 year entitlement period is imposed, in 2 years they would lose any copyright protection that they currently have, unless they have the will and the capacity to contest any potential appropriation of their intellectual property. As the cost of any legal defence is prohibitive, essentially any rights in intellectual property would be lost in a very short time frame.

What is not clear is how American film studios can have 70 year copyright protection on their intellectual property, and small Australian publishers could be somehow rather restricted to 15 years. Any such situation appears to be totally inequitable and biased in favour of the “big end of town” and this would be contrary to any reasonable assumption of natural justice.