

Post-draft submission

An expanded explanation of my background is provided to support subsequent comments.

As stated in my submission – No. 127 – I am a journalist, communication consultant and a research consultant.

As a journalist, principal appointments have been: Sydney correspondent of The Advertiser (Adelaide); federal parliamentary correspondent of The Sydney Morning Herald during the Whitlam-Fraser years; and a freelance journalist covering a particular industry for more than 15 years.

I was director of public relations at the Aboriginal Development Commission when Charles Perkins was chair, an annual report writer for the Department of Aboriginal Affairs and a speech writer in the Department of Aviation. In private practice I've specialised in market research and sport.

I am a trained political sociologist and survey researcher, holding a BA Hons from the ANU and a graduate diploma from La Trobe.

As a researcher, I've specialised in health, Aboriginal Affairs and communication.

All that has been put aside during the past few years because of intensive consumer advocacy and research in:

(a) legal regulation, having been a victim of a major trust account fraud at a law firm in Adelaide in 2005, with emphasis on replacing the development of regulatory laws by monopolies of lawyers with independent, lay-controlled bodies, and by replacing existing lawyer-biased laws with client-lawyer equitable legislation;

(b) residential tenancies because of inequities in SA residential tenancies and strata titles legislation and which are developed with the highly limited participation of lessees (tenants) and which favour lessors (landlords);

(c) arising from those issues, consultation and participation methods used in government and semi-government inquiries and decision-making, including examination of unprofessional consultative practices e.g. unrepresentative, unreliable and invalid online surveys which grossly misrepresent public opinion; and

(d) most recently as a participant in Australia's current bid for membership of the international Open Government Partnership which commits member countries to the principles of transparency, accountability, technology and innovation and citizen participation in government decision-making. If nothing has been heard about it it's because the Department of Prime Minister and Cabinet which is conducting it has taken a restrictive approach, including closeting the work-in-progress membership bid by wrongfully claiming it is subject to the caretaker government conventions. Further, consultation has

been limited to negligible public participation, fewer than 40, unrepresentative public interest groups, and no private sector participants.

Resulting from that experience, the concept of a Public Interest Advocacy Council has been developed. A similar proposal has been developed by the Canberra Alliance for Participatory. Its proposed role will be to monitor government and semi-government activities, to collect public opinion and to advocate it and negotiate decisions as equal partners with government (in accordance with OGP principles).

All that is background to:

1. As far as can be ascertained from the Report, there has been no consultation in this Inquiry with “the public”.
 - Point 1.5 says: The Commission held informal consultations and roundtable discussions with governments, regulatory bodies, peak industry groups in the government sector, as well as a number of private and government organisations (Appendix A)
 - there is no explicit mention of public discussions
 - and these public hearings are no substitute
 - × because probably few members of the public have heard about them
 - a common situation with public inquiries
 - the Report therefore appears not to be based on expressed public wants and needs nor on the prices members are prepared to pay.

Recommendation 1 – the Report’s recommendations should be tested with the public then either amended or a supplementary report be prepared.

2. It follows from the expanded introduction that I am a consumer advocate – in particular for lawyers’ clients and residential lessees and I’ve supported many other causes led by various consumer organizations and personnel.

But I am in this case a supplier as well and while I support a copyright regime in which consumers – the public – can readily access the creative works they want and/or need

- I am adamant that they must pay fair and reasonable prices that will fairly and reasonably reward creators

I therefore oppose the introduction of a “fair use” regime.

The reasons have been expounded by other contributors to the inquiry, notably by Kim Williams, chairman of the Copyright Agency and Viscopy and former CEO of NewsCorp Australia. (“Fair doesn’t mean free: changes would crush local content”, Sydney morning Herald, Page 19, 6 May 2016).

The interest-stripping provisions would rob creators of due income. The open-ended exceptions probably would lead to much litigation with creators trying to prevent e.g. rulings such as the Federal Court decision that headlines cannot be copyrighted.

Recommendation 2. That the Report recommendation for a fair use copyright regime be deleted.

3. I urge the Commission to re-consider my submission about “aggregation”.
There is a curious belief that creative works once published are free to use. “It’s in the public domain so I can use it,” has been said by aggregators. “No-one can tell me how to run my business,” was a comment from a non-publisher business owner who was publishing an aggregation of news stories on his company’s website.
Those views are effectively consistent with the fair use proposal.
But it’s incomprehensible that plagiarism – theft – can be legitimised.
And it cannot be reconciled with the Commission’s statement that “...the IP system’s overarching objective should be to maximise the well-being of all Australians.” (2.2., page 54).

Recommendation 3: That the Commission fully consider the recommendations in my initial submission that “aggregation” be proscribed or subjected to a fee-paying regime.

4. My submission also opposed the notion that the duration of copyright should be 15-25 years rather than the 70 years provided under the Australia-US Free trade Agreement.
It proposed perpetual copyright with freedom to sell or pass the rights to any person or organization.
Any attempt to change this or to use it as a lever for other changes must be resisted.
Additional to the reasons given in my submission is the reason that every publisher or journalist with an archive of stories, photos, graphs and charts, cartoons etc could have the copyright stripped despite the archive being used regularly for backgrounding current stories or selling to interested parties.
In my case, stories written in 1997 when I began covering a particular industry would be out of copyright by now if a 15-year rule applied.
And by the time I want to end my journalistic days, the archive which could be a valuable assets for sale might be worthless.
5. My submission was not mentioned in the Report. An enquiry resulted in the brief explanation that the Commission wanted to go wider and that it was too difficult to evaluate the extent of aggregation.

No response was received to a second inquiry for further explanation, a failure which was inappropriate.

The submission, given that it came from an individual and not an organization and therefore was produced with fewer resources than available to an organization, provided a detailed account of the factors involved in aggregation. It nevertheless calculated one aggregator's earnings at \$300,000 a year gross with minimal capital and recurrent costs.

That should be used by the Commission as the basis for investigating the nature and extent of aggregation and not left in the "too hard basket".

There are an increasing number of journalists being dismissed by media organizations and it's a reasonable assumption that some of them will try to found their own online publications. At least one prominent journalist – Michael West, formerly of the Sydney Morning Herald, has announced plans to do that.

They should be able to do so on a level playing field.

If not, building on the Report sub-heading "Copy(not)right", the Commission could be labelled the (Un)productivity Commission.

6. Finally, a pitch is made for the Commission to adopt the fundamental Plain English rule about line length. In "Writing in Plain English" by the late Professor Rob Eagleson, of Sydney University and once a Commonwealth Government adviser, said that 12pt was the font with which most readers were comfortable and that if this were used, line length should be between 50 and 70 characters.

The Report's lines contain about 90 characters long and reading was not as easy as it could have been.

There also were many lengthy paragraphs and this also adversely affects readability.

Chris Snow

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