

# Submission to the Productivity Commission Draft Report into Intellectual Property Arrangements

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By **Mark Isaacs (Composer)**

## DRAFT FINDING 4.2

While hard to pinpoint an optimal copyright term, a more reasonable estimate would be closer to 15 to 25 years after creation; considerably less than 70 years after death.

### **To Whom It May Concern**

As an Australian composer of international distinction with 40 years of professional practice to date I write to express my objections and concerns regarding the Productivity Commission's draft finding regarding copyright term (see DRAFT FINDING 4.2 reproduced above) as well as to media statements following the release of the draft report that were made by **Ms Karen Chester**, a commissioner with the Productivity Commission.

The international system of copyright administration recognises the core concept of *intellectual property*.

The Berne Convention which enshrined this principle dates back to 1886, so the system is only 130 years old. It was disappointing to see Ms Chester greatly exaggerate the antiquity of the system by more than a factor of three in a recent media interview with her statement: "You've got a system of intellectual property arrangements *that were developed four centuries ago* [sic]" [italics mine].<sup>1</sup> It is not acceptable that 130 years is inflated to "four centuries" in a serious lapse of factuality within a context where a distinguished commissioner uses this gross misinformation to deride the current system publicly.

Noting the principle that intellectual property is property like any other, it should be remarked that intellectual property is the only form of private property that is mandatorily collectivised – becoming public property by entering the "public domain" – after a fixed term. Other private property may be bequeathed in a chain of title that is without any limit at all.

The current arrangements allow intellectual property to be privately bequeathed over approximately two generations (until 70 years after the death of the author). This is unremarkable compared to other forms of private property which may stay in families for many generations and without limit.

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<sup>1</sup> See <http://www.abc.net.au/news/2016-04-29/geoblocking-consumers-do-not-breach-copyright-by-circumventing/7369714>

It is certainly appropriate that intellectual property is eventually collectivised and passes into public hands, but there is no case to be made that this needs to happen sooner.

Commissioner Chester argues disingenuously when she says: "Continuing to reward someone after they're resting in peace doesn't make a lot of sense"<sup>2</sup>. This completely misses the point that intellectual property is *property* which may naturally reward those which inherit it. Her statement is analogous to saying "It doesn't make a lot of sense that children receive rent from their parents' investment property after the parents are resting in peace".

I myself have found that in my lifetime thus far the rewards from my work have mostly been well below the average – and very often the minimum – wage in this country. Many people of my age (58 this month) are acquiring investment real estate properties which they fully intend will be bequeathed to their children and grandchildren. I own no real estate other than the family home; my intellectual property is the only other property I have that I can bequeath.

Thus I strongly object to a proposal that will actually reduce the term of copyright in many of my works to well before my own death, let alone my benefactors'. About half my catalogue of past works is now more than 15-25 years old and about one third of my (meagre) income comes from uses of back catalogue copyright titles. Apart from disallowing me to bequeath my property, this proposal would reduce my income substantially. **In no other area would it be acceptable for the Commission to propose that the Government take steps that would substantially reduce the income of low income earners such as myself by effectively confiscating and collectivising property on which the person depends substantially for their living.**

In light of the dependence on royalties of many individual artists such as myself in order to attain even subsistence income it is even more galling for Ms Chester to discredit the principle and divert attention detrimentally by claiming that the current arrangements regarding copyright term are the natural province of "some of the large corporates on the West Coast of the US"<sup>3</sup> when it affects individual artists so significantly.

As well as not having our livelihood undermined in our lifetimes we should be permitted to bequeath our intellectual property just like any other property, subject to the current quite adequate provision that it will pass into the public domain 70 years after our death.

I strongly urge that DRAFT FINFING 4.2 be removed and that copyright term be left where it currently is in line with other international signatories to the convention.

Yours sincerely,

Mark Isaacs

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid. (embedded audio of radio interview, time code 3:38)