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2 June 2016

**Re: Productivity Commission inquiry submission regarding Intellectual Property Arrangements**

As an independent publisher:

I wish to express my concern regarding the proposal **Draft Recommendation 5.3** that proposes that the Commonwealth Copyright Act (1968) be amended to replace current 'fair dealing' provisions with a 'fair use' provision similar to that which operates in the United States.

I agree and support the following views expressed in the Currency Press submission of 27 May that states:

'...this principle introduces a level of uncertainty into copyright law that would greatly increase compliance cost....'

I am also deeply concerned that such uncertainty creates an environment whereby it would be relatively easy for larger, more powerful organisations to push the boundaries of the meaning of 'fair use', thereby placing the onus of defending such possible breaches on the copyright holders. Many smaller operators such as authors, illustrators, and small independent publishers generally would not have the resources in time and funds to legally defend such possible breaches and are therefore potentially left at the mercy of larger, more powerful organisations. The onus for defending one's right to use copyright material should be on the non-copyright holder, not the copyright holder. The current 'fair dealing' provisions are sufficiently clear across a range of circumstances to allow for this. The proposed amended wording is not, on account of its uncertainty.

In this context I would add that the history of publishing shows that in general the most original, distinctive and creative works have their origins amongst smaller independent publishers and their authors. As publishers become larger and merge with other publishers their publications tend to become more homogenous in style, with occasional exceptions. There are fairly obvious reasons for this that I will not detail here. However, it is clear that to retain a distinctive Australian voice and image in publishing that the rights of Australian authors and also the smaller independent Australian publishers must be protected. The proposed amendment erodes the current protection afforded by the existing wording.

I further wish to express my concern regarding **Draft Finding 4.2** that proposes that the term of copyright should be reduced to between 15 and 25 years on the grounds that the commercial value of most works is fully exploited by that time, and this would free up works to be 'transformed' or exploited in other ways by other creators.

First, I would ask the obvious. Why should those rights be freed up? A 15-25-year term is very short in the creative world, as it can take years, if ever, to recoup initial time and investment in the development and production of creative works, and often it is the body of work built up over time that underpins the viability of author's and publisher's operations and the publication of new works. Indeed, the onus on 'other creators' as mentioned above is in fact to create their own new work, not to use the creations of others as if it were their own, unless with permission. Further, in no way does the existing wording block 'other creators' ability to create their own new original creative works. It simply requires that if in the process of doing so they need to use the creative works of others, they seek permission and pay a fair fee for that content that is in copyright. Hence the proposed re-wording appears to serve no true purpose other than to make copyright that is rightfully controlled by the copyright holders more accessible to non-copyright holders, and hence it strikes at the heart of the very meaning of copyright.

I also agree and support the following views expressed in the Currency Press submission of 27 May that states:

'Reducing the length of copyright would reduce an author's ability to exploit the rare works that pay for all the others.'

I further agree and support the views expressed in the Currency Press submission of 27 May concerning the potential for 'fair use' provisions to conflict with 'moral rights'.

It is my view that the Copyright Act should protect the rights of authors and licensed copyright holders such as publishers and that the proposed changes as referenced above erode those rights rather than protect them. In my view, the changes as referenced above have been drafted in the interests of non-copyright holders rather than copyright holders and hence appear to have the incorrect focus.

Yours faithfully,

Emma Borghesi  
Director