

RIC Submission on Fair Use

On 6 December, the then-Attorney General outlined the Government's views on intellectual property protection:

Australia's creative industries are not just a vital part of our culture but, a thriving sector of our economy. In 2011, PricewaterhouseCoopers estimated that the creative industries in Australia were worth \$93 billion, which is around 6.6 per cent of GDP. The industries employ 900,000 Australians or about 8.8 per cent of the workforce, which makes them Australia's seventh largest industry—bigger than construction and bigger than retail. It is important that, just like other workers out in our economy, those who make our great films and record our great albums are entitled to the fruits of their efforts. Without strong, robust copyright laws, they are at risk of being cheated of the fair compensation for their creativity, which is their due and the Australian government will continue to protect them.

...

I want to reaffirm the government's commitment to the content industries. It is the government's strong view that the fundamental principles of intellectual property law, which protect the rights of content creators, have not changed merely because of the emergence of new media and new platforms. The principles underlying intellectual property law and the values which acknowledge the rights of creative people are not a function of the platform on which that creativity is expressed. The principles did not change with the invention of the internet and the emergence of social media. So in this changing digital world, the government's response to the ALRC report will be informed by the view that the rights of content owners and content creators ought not to be lessened and that they are entitled to continue to benefit from their intellectual property.

So, what has changed? The creation of product in the education sector is a direct corollary of the scope of intellectual property that government gives to that product. Companies within this sector have been bringing innovative products to the education system in Australia now for over 30 years and throughout the world for over 100 years. Australian products that are driven into the international space showcase the Australian education system. These creative companies provide a space and livelihood to thousands of people. This is an important industry for Australia. These are the companies who provide Australian product for our Australian kids going to school. The protection of the Australian culture is dependent on children going to school being taught through Australian product. These products that are created, the Intellectual Property within them, must be protected and acknowledged as having value.

RIC Publications, a WA based educational publishing company is the official primary publisher for the Australian Olympic Committee. We have published a series of resources for primary teachers to use in conjunction with the participation of the Australian team in the Olympic Games. A glance through our catalogue demonstrates the focus that Australia and the Australian Curriculum has on our publishing portfolio. Our biggest selling series currently is the Australian Curriculum series. This series has a 7 book set on each of the subject areas within the Australian Curriculum for primary school. These products are key to Australian teachers delivering the curriculum. RIC Publications is the Australian Primary Publisher of the Year for 2015. This accolade was achieved through the votes of primary school teachers. The products that we create have real value within the school system.

A significant proportion of the product that we create within Australia is then licensed or exported through our own subsidiaries. We have agreements in place in 22 countries and earn significant amounts from exporting our Australian product. The products that we create also enhance the reputation of teaching and learning in Australia in a great many countries throughout the world. It is products created by Australian publishers that drive this awareness. We have won many awards internationally for our products, as have so many other Australian publishers.

We are therefore totally opposed to the Commission's draft recommendation that parallel import restrictions for books be removed entirely.

The current provisions work well for teachers, parents and students - they can import a single copy for themselves of any book from anywhere in the world. At the same time, the current provisions are also vital for us because they provide a vital base level of protection and certainty for our investment.

As noted, we license our books into some 22 countries while still maintaining ready stocks in Australia. A number of these countries are still developing countries, so we price our product in those markets accordingly. If parallel import restrictions were removed, we would face the prospect of people who had not invested in our product buying up stock from other countries - and particularly from the developing countries - at what in Australian terms are bargain-basement prices and then importing those copies into Australia, thereby completely undercutting our own home market and, potentially, our ongoing viability. If that happened, we would need to seriously consider very difficult choices - upping all our prices for developing countries or moving off-shore ourselves. Either of these would be lose-lose for everyone, including the Australian economy.

The products that we create are intended for sale and we invest in them on the basis that we will be providing what teachers need and at an affordable price-

point. The Australian market is highly competitive and we have to be keenly aware of this when we price our products, but the use of these products has to be paid for. There is a distinct difference between product that is created with the intention of selling it and product that is created to stimulate a discussion or create an argument on a topic. There is so much material created by academics or by government that is the latter. Material created by academics often only exists to advance their beliefs, understandings and opinions - or careers. These academic papers should not be confused with actual product that is created to be sold into the learning space. Such material - and material created by governments - can be given away for free or licensed without recouping costs or making a profit.

The material that teachers cry out for - and buy from us - must, however be paid for, and must therefore be protected by strong intellectual property laws. This is the market operating as it should, with no government subsidies.

The Commission's draft recommendations on "fair use", however, ignores all this.

First, the discussions in the report centred on the use of material to create further research or use by "follow-on innovators" is not relevant and should not apply to the majority of companies who are working in the education space. The materials created by companies, certainly in the primary and secondary sector, are commercial products that are created to facilitate a teacher in delivering the curriculum within their classroom. These are tools that teachers and students use. The books, or digital products in use for this purpose are no different than the physical items - jigsaws, games etc. - that they buy from other suppliers. All these items are protected by copyright and to the extent that there is flow on innovation - whether by big tech companies or anyone else - we see no rational reason for giving them a free-kick with material we have spent a lot of time and money investing in.

If these innovators want to use our material, they are welcome to come and discuss the matter with us, but we reserve the right to decide whether or not we will license them and, if so, on what terms.

The industry that we are in is a creative industry. 80% of the staff in RIC Publications have tertiary or professional qualifications in their area of expertise. We have 45 people working in our Perth office and a further team of 8 sales people based throughout Australia. The other parts of our company internationally employ a further 50 people in our offices in 4 countries. We are a small company by the standards of international publishers. We are still significant to the teachers and children who learn within Australia. Teachers rely on companies such as ours to develop materials for them in responding to the changing demands of teaching and delivering the curriculum as laid out by government.

The creation of new product in the education industry is also a long term project, requiring long term investment and planning, and we're shocked that the Commission should think that the optimal term of copyright is only 15 to 25 years.

An educational publishing company will spend 2-3 years developing product that might not see the light of day. There might be a significant change within the curriculum in that period rendering the product obsolete. Other products are created to facilitate teachers planning for a new curriculum. Significant change within the curriculum will require resource to allow the teacher to deliver. Some of this resource will be textbook, workbook or copiable material. All these products have extensive teacher notes, guidance and assessment built into them.

There is significant value to the teacher in being able to access this product. A significant reservoir of material is made available to teachers to plan and deliver the curriculum. Teachers do not have the time available to them to create material that will be at a professional standard. This is what drives the wonderful education system that is currently in place. Australia is highly regarded throughout the world for the education system it delivers. This is only achieved through the partnership that is there with educational publishers supplying product that is helping teachers deliver this.

The current system where schools, colleges and libraries are licensed to allow teachers to copy extracts from these creative materials in return for payment through Copyright Agency must be retained. We therefore cannot agree with the Commission's draft recommendation that "fair dealing" should be replaced with "fair use" - a change that would essentially see the collapse of our Australian market, given the experiences in Canada recently with its education sector refusing to pay for material because of the way it understands "fair dealing" to apply there.

In the primary and secondary sections of the education system, teachers are constantly looking for the best product for children in their care. They experiment with the various products provided to ensure that the products purchased by parents are the best for that teachers requirements. A teacher can use samples from other products to develop a lesson, without fear of being in breach of copyright and recognising the value in the product that they are using.

Statutory licensing through Copyright Agency has served the Australian education system well. The license allows writers and publishers to invest in Australian specific resource, knowing that the use of this will be recognised. This is not a subsidy for these companies and the individual writers, it is their right. The products that they are creating are bringing value to the education

system and this must be recognised in copyright law, and not be thrown away or severely compromised by an ill-considered recommendation that Australia should enact a "fair use" exception.

The desire of big tech companies - if they are the follow-on innovators that the Commission refers to - to use product from publishers and sell it for their own profit, must be prevented. This is piracy of the highest order. These companies do not create product themselves. They only develop tools and delivery models. These tools and delivery models are not provided to the world as open source product. Big tech companies protect their intellectual property - and don't appear to contribute at all to the Australian economy through their taxes. That they are innovators does not, by itself, provide any justification at all as to why they should have a greater ability - which they would take with open arms under "fair use" - to use or re-use our product without our involvement and permission. We simply could not afford to take on a court case against them.

In a nut-shell, then, the Commission needs to reconsider its "finding" that the optimal period of copyright is 15 to 25 years and reconsider its recommendations relating to "fair use" and that all remaining parallel importation restrictions on books be removed.

Seamus McGuinness
Managing Director
RIC Publications
Australian Primary Publisher of the Year 2015
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