

We offer this submission to the committee

We are individuals from a range of creative professions who have a direct interest in the evolution in copyright legislation that this committee represents.

Copyright should exist as a regime that balances the rights of copyright holders with those of the public. In return for providing to copyright holders the ability and enforcement necessary to defend copyrights and thereby legitimately profit from their creations for a fixed period, the public, via the Commonwealth, is compensated by those creations eventually falling into the public domain and being accessible for free.

We offer a range of issues and solutions that we consider to be worthy of the committee's consideration:

**1) Accessibility**

We are concerned that both the current copyright regime, as well as any proposed extension to that regime, render large quantities of copyrighted material unavailable to the public. As only 4% of copyrighted material remains commercially available 20 years after its original publication, we are concerned that copyright holders, which, in practice, primarily means large media corporations, can 'sit on' the remaining 96% of copyrighted material, thereby rendering it unavailable to the public for inspiration, research and enjoyment. Any extension would only worsen this problem.

In our experience as creative professionals, we have observed that the only way some of these materials (films, books and music) can be accessed is by 'unauthorised copying', either through downloading from the Internet, or duplicating from older media such as LPs. We would like to propose that to balance any proposed increase in copyright terms:

- obligates copyright holders to make all of their copyright holdings accessible at all times, either as physical media or in downloadable digital form. Copyright holders could of course charge for these materials as they saw appropriate, so long as the materials are freely available.
- If it is not economically viable for copyright holders to make this material available (and there are many digital mechanisms that would enable this availability cheaply), then that material should fall into the public domain. It is difficult to see how copyright holders could object to this, as they are gaining no economic benefit from the materials.

We would like to remind the committee that while the Commonwealth has a role in stimulating economic activity, it should not be in the business of propping up flawed or failing business models with legislation.

Our personal experiences of unauthorised copying is significantly at odds with the public attitudes of large media organisations who argue for more oppressive legislative regimes to maintain their profitability. As a result of being able to experience music, movies and other materials via the Internet, we have legally purchased far more material than we would have without the ability to experience material in this way.

We believe that any loss in profitability that large media organisations are experiencing (and we are not sure that this is the case) is due to a complex range of factors, not least of which is the quality of some published material, rather than unauthorised copying. Media companies and other copyright holders that provide quick, simple and legal access to their copyright materials will soon find that people are very happy to pay for a product that is reliable and of good quality, rather than download

materials of questionable origin and quality for free.

## **2) Fair Dealing**

It is our opinion that current Fair Dealing provisions for educators and institutions should not be diminished.

## **3) Fair Use**

As Australia currently has no statutory Fair Use regime, we would urge that these be implemented, both in legislation and with the possibility of common law exceptions as the growth of media formats and distribution methods evolve. We would like these to include:

- *An enshrined right to time-shift copyrighted broadcast material.* Australians should be able to record television and radio broadcasts to be enjoyed at a later time, and many would be extremely surprised to discover that they do not legally enjoy what should be a commonsense right.
- *An enshrined right to media-shift legally purchased or owned copyrighted material.* Once purchased, copyright holders should not have the right to dictate the manner in which that purchased material is used; in no other commercial transaction is it possible for the seller to impose conditions on the purchaser with regard to a wholly purchased product.

Media formats also change rapidly, and are now less durable than older formats such as print. The legal ability to move software from floppy disk to CD, or music from LP to CD to an iPod or computer is a way for users to ensure they can continue to enjoy material they have legally acquired, in a manner that is useful to them.

- *A enshrined right to create backup versions of legally purchased or owned copyrighted materials.* As stated above,

media such as CDs and DVDs are vulnerable to destruction in a way that media such as books are not (a single scratch can render them useless). It is important for users to have a legal mechanism through which they can preserve the integrity of the material they have acquired separate from the media it has been supplied on.

Books have been in use for thousands of years. LPs were in popular use for less than a century. The Floppy Disk barely survived for 20 years. Enshrining this right is more important than ever, considering the rate at which newer media formats are becoming obsolete.

Any moves to institute and enshrine copy-protection mechanisms on media would deny users the ability to protect and preserve their legally acquired and often expensive material, whether music, software or movies.

- *An enshrined right to reverse-engineer software for the purposes of compatibility.* With the growth of Open Source software, it has become increasingly apparent that many aspects relating to software and operating system operation are not always well disclosed by software producers. We believe this is done by companies in the interests of maintaining profits by controlling competition, and not in the interests of producing the best experience for end users.

We would add that reverse engineering for infringing purposes should continue to remain unlawful.

We believe that the changes proposed above would ensure an appropriate balance between the interests of copyright holders and the public. The creative commons would be enriched through an enhanced role for the public domain, ensuring that there is a

fertile source of inspiration for future creative endeavours and the economic and creative enrichment of the Australian community.

We thank the committee for its consideration of our submission.

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