

The recently released Productivity Commission report on the Australian intellectual property system is thorough and measured. Its recommendations are far from radical but if implemented would improve the environment for the creation and use of knowledge-based products in Australia. Currently, too many parts of the intellectual property system merely service rent seekers – that is, those who seek rules and regulations that merely transfer income from other people to themselves without any net addition to social wealth.

### Copyright is the preserve of rent seekers

The report quite rightly focuses on copyright. The intention of copyright laws are to encourage people to create cultural products such as books; songs, movies and fine art *inter alia*. The argument goes that if the authors of these works (or their owners) can charge those who enjoy these works royalties, then more people will decide to work as artists. Royalties mean the artist gets an income and can therefore spend more time creating works. This argument has some merit.

But the right to control who can reproduce these works should not last forever. In fact, it should not last beyond the point at which the royalties has an effect on artists' decisions to create more. The question is what is this point? One thing we can all agree on is that \$1 in 100 years' time is worth very little today. At a 5% discount rate, it is worth less than 1c. This means that existing copyright laws (which can give control for over 100 years) are merely lining the pockets of movies houses and the heirs of dead authors without having any effect on the current cohort of artists.

### The copyright industry is very well organised

The copyright industry is very well organised. The amount of effort they put into shoring up and extending existing copyright laws speaks to the size of the monopoly profits they are protecting. We should not be fooled by their *modus operandi* of wheeling out our favourite authors and actors to petition on their behalf. Their usual plea is that copyright laws encourage local artists but the reality is that only a small amount of the monopoly profits from copyright go to encouraging Australian artists. Most goes overseas.

## Encourage local artists by other policies

The desire to encourage local artists is a commendable cultural policy decision. However, the best way to do this is to raise taxes – say either by raising the GST or moderating income tax breaks – and use the revenue for stipends or grants to local artists. It is not to use copyright to overcharge the ordinary householder; to prosecute 15 year olds for downloading movies; or to waste the time of students and school teachers filling in royalty forms.

## Efficient term for copyright

Many people believe copyright should last 20 – 30 years maximum. The Productivity Commission is very moderate in that it does not go this far. It makes only a modest recommendation to replace the narrow ‘fair dealing’ exceptions to a US-style ‘fair use’ exception. Fair use is a small concession to the absurdly long copyright term. Compared with fair dealing it is more flexible and able to adapt to changing circumstances and technologies.

## Moral rights?

There are a lot of red herrings in the copyright debate. People (deliberately) confuse the right to charge a royalty with moral rights and fairness. Both are important social norms that should be respected but the question is: Is this the role of copyright? Moral rights imply the obligation to attribute creators and treat their work with respect. This does not mean the artist should be able to decide who can reproduce his or her work for the purpose of genuine enjoyment.

## Fairness?

It is sometimes claimed that royalties are justified on fairness grounds. Fairness is important. But if we want to open the fairness debate, we need to look at all occupations. In terms of value to society, a case can be made that the primary school teacher who taught you to read; the civil engineer who brings you drinking water and the surgeon who removed your bursting appendix, should be paid more. Moreover, copyright only delivers an income to very few artists. Is this a fair system? Maybe, we should limit copyright to 20 years and increase our stipends to local

artists instead.

### **Disclosure**

*Beth Webster receives funding from the ARC, the Commonwealth Government and the Victorian Government but not the Productivity Commission.*

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