

Australian copyright laws have questionable benefits

Written by The Conversation

As the Australian Copyright Agency comes under pressure for [appearing to use member royalties to enshrine self-serving copyright laws](#), it's time to question the purpose of copyright. Some argue current laws ensure artists are fairly paid and make more local content. The evidence doesn't support this idea.

Copyright is primarily concerned with creative works.

Exploitation of copyright occurs when the author of a creative work excludes all others from reproducing or otherwise using their work for up to 70 years after their death, unless they, the authors, agree to authorise any such use (i.e. pay a fee or a royalty under voluntary or compulsory licences).

On the [pro-copyright](#) side, we have the global movie and music industry, many IP lawyers and prominent authors.

Opposing copyright, we have [academics](#), [economists](#) and other [public policy analysts](#).

Does copyright encourage more creative work?

The intention of copyright laws is [to encourage people to create cultural products](#) such as books, songs, movies and fine art etc. The argument goes that if the authors of these works (or their owners) can charge royalties to those who enjoy these works, then more people will decide to work as authors.

The author gets an income and can therefore spend more time creating works.

However, there are strong arguments that copyright may have gone too far. Royalties only go to a small amount of people, and they mostly prop up the incomes of "rent seekers". Rent seeking is when income from copyright just makes existing creators wealthier and does not encourage more people to become creators.

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The contra-copyright group see [some advantage](#) from copyright lasting a few decades, but not the current system, which grants copyright for life plus 70 years after death (there are some exceptions).

Royalties should not be paid beyond the point at which the income stream has an effect on decisions to create more now. Existing copyright laws (which can give control for over 100 years) are merely lining the pockets of movie houses and the heirs of dead authors, without having any effect on the current group of artists.

Australian culture will falter without copyright

The [next argument in favour of copyright](#) is that the true value of copyright is the ability for the owner to control the use of their work through licensing.

Given the ubiquity of the internet, it is now very easy to copy works and local authors will not be able to make a living from their work.

Hence, any time or effort they put into creations will be in their spare time after working elsewhere. Enabling authors to receive some royalties goes some way towards providing them with independent income.

But the contra-copyright group [say](#) the fact that most royalties go to very few authors, or [go overseas](#) to the big music and movies houses and publishers, means copyright does little for emerging and local artists.

In fact, the best way to encourage the local cultural sector might be to offer stipends or grants directly to local artists.

It is not to use copyright to overcharge the ordinary householder; prosecute those who illegally download movies; or to waste the time of students and school teachers filling in royalty forms.

A right to control your creation?

Another [pro-copyright argument](#) is that copyright is needed to ensure authors are credited for, and control, their work. This is also known as “[moral rights](#)”, and creates the obligation to attribute creators and treat their work with respect.

But we could question whether this is the role of copyright. Gifting moral rights does not necessarily mean the artist should be able to decide who can read or watch his or her work for the purpose of genuine enjoyment.

Authors should be paid for their contribution to society

The [pro-copyright group](#) claim that royalties are justified on fairness grounds. People should be rewarded according to their contribution to society and as royalties are linked to use (reading or watching), it is a clever way to link contributions.

However, in terms of value to society, a case can be made that primary school teachers, civil engineers or surgeons should be paid more. And as copyright only delivers a living wage to very few artists, we can question whether the current laws are a fair system.

Fair use

The [Productivity Commission](#) recently agreed with the Australian government to reform the education statutory licensing scheme, but commented that this decision was missing a recommendation to move to a “fair use” system of copyright exceptions.

[Fair use](#) allows for certain circumstances where people can use copyrighted material without the copyright holder’s permission.

Australia does not have a fair use exception. It only has a more limited “fair dealing” exception which means we can only avoid permission for uses that are on a list.

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A fair use system would allow users such as schools and universities to use works in some situations without paying any royalties. Maybe, we should limit copyright to 20 years and increase our stipends to local artists instead.

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Beth Webster receives funding from the ARC, Commonwealth and Victorian Governments. She is currently president of the European Policy for Intellectual Property association.

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