

Senator the Hon GH Brandis QC
Attorney-General and Minister for the Arts
The Senate
Parliament House
Canberra ACT 2600

By email: senator.brandis@aph.gov.au

Dear Attorney-General

Essential copyright reforms for Cultural Institutions

We write as the peak representational bodies for the galleries, libraries, archives and museums of Australia and, for some of the bodies, Australasia. Our cultural institutions have a proud history of enabling access to and use of the nation's history and cultural heritage and of preserving it for future generations.

However, for the Australian cultural institutions, some parts of the *Copyright Act 1968 (Cth)* currently hinder the capacity of the institutions to preserve and provide access. We seek your assistance to update two parts of the Act, which would allow institutions to properly fulfil their mandates.

An end to perpetual copyright in unpublished works

Unpublished works in Australia are currently afforded copyright protection in perpetuity. This makes it difficult for cultural institutions to deal with archival collections including letters, diaries and business records. Harmonising the term for unpublished works to that of published works (70 years after the death of the author) would open access to millions of archival items held by our collecting institutions. It would also bring us into line with most other countries, including the UK, USA, Canada, New Zealand and those in the European Union.

Reform of preservation copying exceptions

Currently most libraries and archives can only make a preservation copy of a published work after the work has been lost, stolen, damaged or destroyed. The impossibility of making a copy of a work after its destruction leaves institutions with a choice between strict compliance with copyright law or making defensive copies to ensure the preservation of the collection. Even for key cultural institutions (which have a slightly more flexible exception) the restrictions on formats and number of copies rule out international best practice preservation strategies. It should not be an infringement of copyright for cultural institutions to make a use of a work if that use is for the purposes of preserving the work.

We have attached two briefing notes that outline the issues in more detail. We would appreciate the opportunity to speak with you further on these matters, and will contact your office to find a suitable time.

These two simple and uncontroversial reforms have widespread support and would be of great assistance to Australia's libraries, galleries, archives and museums. They would be widely welcomed by both the cultural institutions and the researchers and public who use our collections. We seek the earliest possible reform of these provisions.

Yours sincerely



Dr Alex Byrne
Chair, National & State Libraries Australasia

On behalf of:

Australian Library and Information Association
Australian Public Library Alliance
Australian Society of Archivists
Council of Australasian Archives and Records Authorities
Council of Australian Art Museum Directors
Council of Australasian Museum Directors
Council of Australian University Librarians
Federation of Australian Historical Societies
Museums Australia
National & State Libraries Australasia

Contact:
nsla@slv.vic.gov.au

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Perpetual copyright in unpublished works

Background

Copyright in Australia generally lasts for the life of the author plus 70 years. However for unpublished works copyright is perpetual – copyright never expires

Problems

Cultural institutions have large numbers of unpublished works in their collections, including letters from early settlers, the personal papers of notable figures or diaries of World War One soldiers. These non-commercial works are part of Australia's cultural heritage.

Libraries would like to be able to use these works, to digitise them and make them available to researchers, family historians and other interested people. However because copyright will never naturally expire they require permission to do so, even for very old works. Often permission will be impossible to obtain as the works are 'orphans' (ie it is not possible to locate the owner of the copyright).

Digitisation is an expensive process, and libraries and archives are currently allocating significant resources to evaluating unpublished works on an item by item basis. This administrative burden and cost would be more productively spent ensuring that our cultural heritage is accessible and unleashing the economic benefits of public domain works.¹

International Comparison – copyright term in unpublished works

Canada: Life of the author plus 50 years²

EU: Differs slightly amongst states, but generally life of the author plus 70 years³

New Zealand: Life of the author plus 50 years⁴

UK: Works unpublished by 1989 whose author died before 1969 are in copyright until 2039⁵ otherwise term is life plus 70 years

USA: Life of the author plus 70 years, or 120 years after creation where author is unknown⁶

Solution

Bring Australia into line with the international norm and ensure that all works have the same copyright term, whether published or unpublished.

¹ See for example the UK IPO Commissioned study: Kris Erickson, Paul Heald, Fabian Homberg, Martin Kretschmer and Dinusha Mendis [Copyright and the Value of the Public Domain](#) (2015)

² There are transitional periods for unpublished works whose authors died before 1999

³ See Article 1 of [2006/116/EC Directive of the European Parliament and of the Council](#)

⁴ There are special rules for unpublished works made before 1995, see Digital NZ '[Copyright Terms and the Public Domain](#)'

⁵ This was a transition from perpetual copyright in unpublished works that has caused a lot of difficulties for UK cultural institutions, and is proving difficult to rectify, see [CILIP statement](#) and [UK government consultation report](#).

⁶ See Hirtle [Copyright Term and the Public Domain](#) Cornell University 2015

Preservation Copying for Cultural Institutions

Background

Australia's cultural institutions are charged with preserving the materials of Australia's historical and cultural heritage.

Preservation 'copying' guards against over-handling of fragile items and preserves the content against the inevitable disintegration of the original item. This is particularly striking with digital materials such as floppy discs or CDs, which have a relatively short life-span even when kept in accordance with proper conservation conventions.

Problem

The current copyright exceptions¹ for preservation copyright for cultural institutions are inadequate, leaving institutions with a choice between breaking copyright law or failing to preserve their collections. The current restrictions to a number of 'copies' that can be made does not accord with international best practice, especially for digital-born materials and films. Best practice in these areas would see emulation and reformatting of the material, and its storage in a number file types.

For non "key cultural institutions" such as local museums, libraries and universities, preservation copies may only be made AFTER a published work has been lost, stolen, damaged or destroyed. This is, obviously, frequently a practical impossibility. Where an institution holds the only remaining copy of a published work, this risk the complete loss of that material to the nation.

Solution

The current library and archive² preservation exceptions are removed and replaced with a simple exception that states it is not an infringement of copyright for a library or archive to make a use of a work for the purposes of preservation. The access to these copyright materials would continue to be governed by the existing laws and practices.

As well as enabling cultural institutions to apply world best practice to their collections now, the technology-neutral language will enable the exception to be used as even better technologies and processes are developed.

¹ Ss51A, 51B, 110B, 110BA & 112AA of the *Copyright Act 1968 (Cth)*

² The definition of library and archives in the Copyright Act encompasses the collections of other cultural institutions such as museums and galleries