

Perpetual copyright in unpublished works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 However for unpublished works copyright is perpetual – copyright never expires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Cultural institutions have large numbers of unpublished works in their collections, including letters from early settlers, the personal papers of notable figures or diaries of World War One soldiers.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is an expensive process, and libraries and archives are currently allocating significant resources to evaluating unpublished works on an item by item basis.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International Comparison – copyright term in unpublished works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UK: Works unpublished by 1989 whose author died before 1969 are in copyright until 2039⁵ otherwise term is life plus 70 years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into line with the international norm and ensure that all works have the same copyright term, whether published or unpublished.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² There are transitional periods for unpublished works whose authors died before 1999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⁴ There are special rules for unpublished works made before 1995, see Digital NZ '[Copyright Terms and the Public Domain](#)'

⁵ This was a transition from perpetual copyright in unpublished works that has caused a lot of difficulties for UK cultural institutions, and is proving difficult to rectify, see [CILIP statement](#) and [UK government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