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From: Bill Nicol

Subject: Australian Copyright Revisions

To the Australian Law Reform Commission

Dear President, Deputy President and Members,

This is a submission to the Australian Law Reform Commission's discussion paper on revising the Copyright Act.

I am not going to comment on any specific section or clause. Rather, my interest lies solely in providing an overarching policy perspective from someone who has been writing professionally for the past 40 years, over 30 of them as an entirely self-funded author.

I am an Australian author. I have written several major works, all non-fiction.

My first book was on the bloody decolonisation of Timor by Portugal and the subsequent occupation by Indonesia. It took me four years full time and cost me many thousands of dollars in direct costs, many, many thousands more in foregone income. I also had to put my life on the line when researching it and was chased by Indonesian soldiers with guns.

My second book was on the frauds of William McBride of thalidomide and Foundation 41 fame. It took me six years, four full time, two part time and also cost me many thousands of dollars in direct costs, many, many thousands more in foregone income. Two additional points on this concerning copyright infringement and abuse:

\* All credit for the work went to a journalist to whom I gave a copy of my manuscript when I could not get it published myself. He used it without acknowledgement or attribution. And he was paid a full salary when he did it. I paid for everything myself and had to face bankruptcy from the defamation case that followed and took ten years before being withdrawn. And no one gave a damn.

\* Neither did they give a damn, nor a dime, when lawyers on both sides of the McBride disciplinary case before the NSW Medical Complaints Tribunal used and relied on my book, research material and interview transcripts (that alone took many many months to compile, were an original work in their own right and were referred to in the proceedings as "the Nicol transcripts") to mount both the prosecution and defence. I am told the legal costs alone for that case ran to more than $7 million. From memory, I received $5 payment for being required to hand over all my material by subpoena and when it was eventually returned it arrived in a total mess that took yet more months to sort out. And yet again no one gave a damn.

My third book on negotiating took me two years part time so I did not forego income and the direct costs were limited. But I did put in many months of work.

My fourth book (actually a series of six) on the recovery of Aceh after the 2004 tsunami took over four years and also cost me tens of thousands of dollars in direct costs, many, many thousands more in foregone income.

My fifth book (or 10th depending on how you count them) is my memoirs. It took me less than a fortnight to write but around 60 years to prepare. It cost me nothing, depending on how you measure cost.

This means that, so far, I have devoted around 15 years of my life to writing quality non-fiction books of great political and public importance for which I have earned less than $4,000 income from royalties and copyright payments. But, like all authors I live in and on hope. It is the only thing that sustains me.

What do I think of Australia's copyright laws? They suck. I feel completely naked, unprotected by them. And all I see in the public conversation concerning them is continuing attempts to weaken that which is already weak to leave creators like myself with even less, if that is possible.

The government policy makers and administrators who participate in this should hang their collective heads in shame. They are well-paid care-me-nots concerned with arguments of administrative efficiency but clueless about the time, energy, skills, intellect, creativity, risk, financial pain and physical exhaustion that goes into creating any work of quality.

As for fairness in the use of someone else's creative work, here are the rules I employ for myself and recommend for others:

\* It is fair and reasonable to quote directly from the creative works of another for reasons of legitimate criticism and analysis, conditional on any the quotations not being excessive and also being fully and properly attributed

\* It is fair and reasonable to draw on the ideas both for legitimate criticism and analysis as well as for further exploration and expansion of them, conditional on the source of those ideas being properly and fully referenced, acknowledged and attributed

\* It is fair and reasonable for educators to refer to the material on the same conditions as critics and for libraries to allow (not actively support) copying conditional upon full and adequate compensation to the creator

That's it. Everything else is unfair, improper and an intellectual and economic attack on the creator.

Of course, the digital age has transformed the ability of individuals and institutions to defraud the creator by stealing his or her work and not paying any form of compensation; and self-justifying excuses are easy to fabricate. That's why we creators need bodies like the Copyright Agency and we need them to be seriously well funded and with a far wider brief. Because without them we have not a snowflake's chance in hell of protecting our intellectual property.

The Government gives massive subsidies to other industries - farmers and car manufacturers for instance - which artificially prop them up and extend further massive inefficiencies that the Australian community also pays indirectly for and through the teeth too. I don't ask for such subsidies for myself although am not so much of a fool as to reject any trickle that may come my way. The subsidies are abhorrent economic distortions. Copyright protection is the reverse. It is a creative right that should never ever be abused, including or especially by lawyers and the courts. If they use, indeed base much if not all of their case, on the intellectual property of a creator they should pay no less for that work than they pay themselves. To do otherwise is theft and a gross ethical failure.

In summary, if you want people to create the ideas upon which a society and global community develops, grows and prospers then increase the copyright protections and structures that give even a modest amount of support to we struggling creators. Do the reverse if you want to see them trashed.

Regards

Bill Nicol

Submitter added paragraph below following his original submission above 12 July 2013

Reasonable and legitimate protections are needed for independent investigative authors like myself as copyright creators. While considerations of these protections are presumably not within the remit of the current Commission enquiry, they should be. Copyright is only one part of what should be an integrated equation. The laws of defamation, privacy and freedom of speech should be considered along with it. Treating each separately fragments the relevant laws making it easier for abusers to cherry pick any one part without reference to or constraint by any other. It likewise denies copyright creators any relevant protections or recourse in relation to such actions thereby exposing the copyright creator to malicious abuse. As an independent investigative author, I am sensitive to the consequences. Law makers should be too.