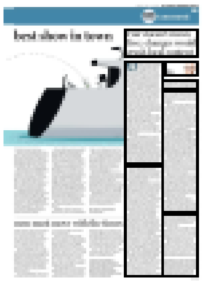

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Fair doesn't mean free: changes would crush local content

Kim **Williams**

As someone who has spent my life running organisations that take risks, invest billions and innovate to provide the best of local and international content to Australian consumers, reading the Productivity Commission's draft report into our intellectual property arrangements was profoundly dispiriting.

I cannot think of another recent report that so seriously misses the main drivers of its area of inquiry – namely innovation and the incentives to produce new work. At the same time, the report treats Australian creative content and its production with a disdain bordering on contempt, and that is surprising for any economic statement.

The commission makes recommendations that would have such a deeply detrimental impact on the ability of film and TV makers, writers, artists and journalists to tell Australian yarns, and make a living doing so, as to be worthy only of rejection.

Take the commission's conclusions on what drives innovation. The draft report claims our intellectual property and copyright settings inhibit investment and innovation. Really? Most people who run businesses and invest money know that what really drives innovation is a clear operating framework which enables companies and entrepreneurs to manage their risk appetite and capital investment, as well as access to highly skilled people.

In the creative landscape, the bedrock of production is copyright – the Copyright Act provides the critical framework for ensuring returns from investment.

The Prime Minister recognised the drivers of innovation in a statement last year. He committed more than $1 billion to ensure the right incentives to innovation were in place; to encourage risk-taking; and to promote science, maths and computing in schools. There was no mention of intellectual property, given there is already a clear protection framework in place.

So, having spent considerable amounts of time answering the wrong question, the commission then demonstrates what can be described only as a breathtaking disregard for the creativity of Australians. It dismisses concerns that its recommendations would lead to less Australian content, with this response: "most new works consumed in Australia are sourced from overseas and their creation is unlikely to be responsive to the changes in Australia's copyright [laws]." So, that encapsulates the commission's thinking – American and British material will suffice and Australian original work doesn't really count for zip.

But make no mistake, if the commission's recommendations to implement "fair use", for instance, were implemented, there would be less Australian content on our screens, on our bookshelves, and in our schools and universities.

"Fair use" is an American legal principle that would allow large enterprises to use copyright material for free, for which, under Australian law, they currently have to pay. PwC recently estimated that introducing "fair use" in Australia could result in a loss of GDP of more than $1 billion.

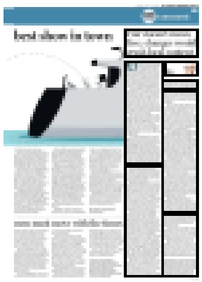
PwC's report (provided to the commission) outlined three reasons for this collapse. First, "fair use" would strip millions away from Australian storytellers and content creators because governments, companies and large education institutions who now pay to use content, would stop paying as much or stop paying at all.

PwC examined what happened in Canada when similar changes were made in 2012. Universities and schools refused to pay for the educational content they used. This led to a 98 per cent reduction in licensing revenue, the closure of many publishers and a loss of jobs. Oxford University Press stopped producing Canadian textbooks for schools.

Second, "fair use" would permanently lift legal costs in Australia. US copyright cases are almost five times the volume of cases in Britain, whose law is comparable to ours. Good for lawyers, bad for creators and consumers.

Third, fair use would undermine the effective and fit-for-purpose licensing system that has evolved here allowing Australian teachers to share and copy almost every book, magazine, image or journal published in the world, with their students, for less than the cost of a single book each year.

None of this means that we shouldn't continue to update our Copyright Act. Industry-led reforms to the act are already well advanced in an unprecedented collaboration between rights holders, libraries



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and education institutions. They deliver on a promise by the Attorney-General George Brandis to review the act in the government's first period in office.

So let's aim for sensible reform that balances the incentives and protections for creators with the rights of consumers to access wide ranging material on fair terms.

But remember, fair does not equal free, and no one needs a manufactured revolution driven by armchair economists who want to blow up Australia's content sector – as this disappointing report proposes.

Kim Williams is chair of the Copyright Agency and Viscopy. He is a former CEO of NewsCorp Australia, FOXTEL, Fox Studios Australia, the Australian Film Commission, Southern Star Entertainment and Musica Viva Australia.