Peanuts for culture

Heralded as a landmark for Australia's trade, the Australia-United States Free Trade Agreement delivers greater access to the US economy for Australian manufactures, primary produce and services, and vice versa. We should be able to sell more Holden utes and peanuts even if they won't buy our sugar and are hesitant about our beef. US interests will be able to invest more easily in Australia and compete in many sectors, but the big costs for Australia lie in culture and intellectual property protection.

The Minister, Mark Vaile, claims that "Our right to ensure local content in Australian broadcasting and audiovisual services, including in new media formats, is retained". But the summary hedges "The Government will also be able to take measures to ensure that Australian content on new media platforms is not *unreasonably* denied to Australian consumers, *should it determine that Australian material is not readily available to them*." Even in this half promise, there is nothing to protect the print media, book publishing or to ensure that investment in new media to tell Australian stories, hear Australian voices and smell Australian scents will be viable. The danger to our cultural industries is highlighted by the US claim that "the FTA contains important and unprecedented provisions to improve market access for US films and television programs over a variety of media including cable, satellite, and the Internet".

The intellectual property provision "Harmonises our intellectual property laws more closely with the largest intellectual property market in the world, which is recognised as a global leader in innovation and creative products". It promises to enhance "the ability of Australian innovators to attract investment from the US". This will be achieved by extending the term of copyright to life plus 70 years and other provisions. Although no details have been released yet confirming the extent and categories of works affected, the Australian Digital Alliance has suggested that the provisions will mirror that of the US-Singapore FTA to cover "a work (including a photographic work), performance or phonogram" but it is not clear yet how they will affect subject matter other than "works" ie films, broadcasts etc. In addition the Agreement includes criminalisation of anti-circumvention laws and tighter controls for "allegedly infringing copyright material on the Internet".

Why is this a bad thing? Won't longer copyright terms benefit creators? Isn't it better to have stronger controls over the Internet? Shouldn't we march in step with world intellectual property law?

To take the last question first: yes, it is desirable to be consistent with world intellectual property laws because it makes it much easier to access and use protected materials and to be confident that our creations will be protected. But US intellectual property laws are not the global standard. Even the summary quoted above doesn't claim that they are, only that it would be beneficial to be consistent "with the largest intellectual property market … a global leader in innovation and creative products". In other words, to get cosy with the big bloke on the block. But that big boy doesn't recognise the moral rights of creators as do European and Australian IP laws. US IP laws are driven by the big industry organisations, notably the Motion Picture Association of America. It is they who have repeatedly had the term of copyright extended, just before Mickey Mouse came out of copyright. It is they and their partners who want ever tighter provisions to control reuse and to restrict the public domain.

Life plus 70 years might benefit the grandchildren or great-grandchildren of a creator, if they have hung on to the rights, but it will certainly benefit big corporations which invest in intellectual property. It will safeguard the assets of those which hold collections of film titles, photographs, music, plays, scholarly journals, databases, … They will continue to be able to extract a rent from users of those materials and to maximise the value of their assets when they wish to sell them to another proprietor.

But this will not benefit creators. They will have to pay (or get libraries to pay on their behalf) when they want to use intellectual property. Even normal artistic appropriation, which artists such as Mozart and Shakespeare have used since the birth of creation, becomes subject to licence and fee. This has become the norm in music and is becoming prevalent in the use of images. Access to scholarly information, which is to a degree facilitated in Australia by statutory licences for those working and studying in universities and schools, is vulnerable. Pay per use is the goal of the intellectual property entrepreneurs with fair dealing and the public domain squeezed out. The emphasis is on rent to the copyright owners not recognition of the rights of the creators, market access for peanuts and cable television at the expense of cultural heritage and free access to information.

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