The Unique Flavours of Australia’s Public Domain: A View from History

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Overview of Presentation

- Australian Copyright History 101
- Four flavours of Australia’s public domain:
  - Paintings, drawings and photographs
  - Telegrams
  - ‘Blasphemous, indecent, seditious, or libellous’ works
  - Lectures
The History of Australian Copyright (in 4 minutes or less)

- Colonial Copyright Statutes: the
  Copyright Act 1869 (Vic); Copyright Act 1878 (SA); Copyright Act 1879 (NSW);
  Copyright Act 1890 (Vic); Copyright Act 1895 (WA)
The History of Australian Copyright 1905 - 1912

- Power to legislate with respect to ‘copyrights’ included in section 51 of the Australian Constitution (s 51(xviii))
- Copyright Act 1905 (Cth)
The History of Australian Copyright 1912 - 1968

- Copyright Act 1912 (Cth): section 8 introduces the whole of the Copyright Act 1911 (Imp) into Australian law
1968: Federal Parliament finally repeals the 1912 Act and a new, now very much amended Copyright Act 1968 (Cth) is passed (and Kylie Minogue is born)
Term of protection for paintings, drawings, and photographs

‘Sovereign Hill’, by deasdira, licensed under a Creative Commons generic 2.0 BY-NC-ND licence
Term of protection for paintings, drawings and photographs

<table>
<thead>
<tr>
<th>Artistic Work</th>
<th>Term of Protection</th>
<th>UK Term of Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paintings</td>
<td>14 years</td>
<td>Life + 7 years</td>
</tr>
<tr>
<td>Drawings</td>
<td>14 years</td>
<td>Life + 7 years</td>
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<tr>
<td>Engravings</td>
<td>14 years</td>
<td>28 years</td>
</tr>
<tr>
<td>Sculptures</td>
<td>14 years</td>
<td>14 + 14 years</td>
</tr>
<tr>
<td>Photographs</td>
<td>3 years</td>
<td>Life + 7 years</td>
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</tbody>
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Telegrams

KT Livingston, The Wired Nation Continent (1996, OUP Australia)
Telegrams

Section 1, Victorian *Telegraphic Messages Copyright Act 1871*:

‘Where any person in the manner hereinafter mentioned publishes in any newspaper any message sent by electric telegraph from any place outside the Australian colonies, *no other person shall*, without the consent in writing of such first mentioned person or his agent thereto lawfully authorized, *print and publish*, or cause to be printed and published, *during a period of twenty-four hours* from the time of such first mentioned publication…*the whole or any part of any such message, or… of the intelligence therein contained, or any comment upon or any reference to such intelligence, which will in effect be a publication of the same*’
## Telegrams

<table>
<thead>
<tr>
<th>Statute</th>
<th>Protection from Publication</th>
<th>Period from which Publication had to occur</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vic, 1871</td>
<td>24 hours (s 1)</td>
<td>36 hours (s 1)</td>
</tr>
<tr>
<td>SA, 1872</td>
<td>24 hours (s) 1</td>
<td>36 hours (s 1)</td>
</tr>
<tr>
<td>WA, 1872</td>
<td>72 hours (s 1)</td>
<td>80 hours (s 1)</td>
</tr>
<tr>
<td>Tas, 1891</td>
<td>48 hours (s 3)</td>
<td>No period specified</td>
</tr>
<tr>
<td>WA, 1895</td>
<td>72 hours (s 20(1))</td>
<td>No period specified</td>
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</tbody>
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‘Blasphemous, indecent, seditious, or libellous’ works

Section 7, Copyright Act 1905 (Cth):

‘No copyright, performing right, or lecturing right shall subsist under this Act in any blasphemous, indecent, seditious, or libellous work or matter.’
Section 31 of the Victorian statute (and its equivalents): The author of a lecture, or a person who was sold a copy of the lecture, had the ‘sole right and liberty of printing and publishing such lecture or lectures’ where that lecture was first delivered in Victoria (or equivalent jurisdiction)
Lectures

- The lecturing provisions did not extend to any lecture/s ‘delivered in any university public school or college, or on any public foundation…’ (Vic 1869 s 35; SA 1878 s 33; NSW 1879 s 24; WA 1895 s 34(2))
A minute for Conclusions…

- History is full of surprises!
- While UK law was a large influence on Australian copyright law, there were some changes – these in turn had an impact on Australia’s public domain
- Learning from history: what can we learn for the future of copyright?
...and a shameless plug

- Thesis: *For the Term of His Natural Life…Plus Seventy Years: Locating Australia’s Public Domain* (June/July 2009)
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