

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

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Unlocking IP Conference

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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)

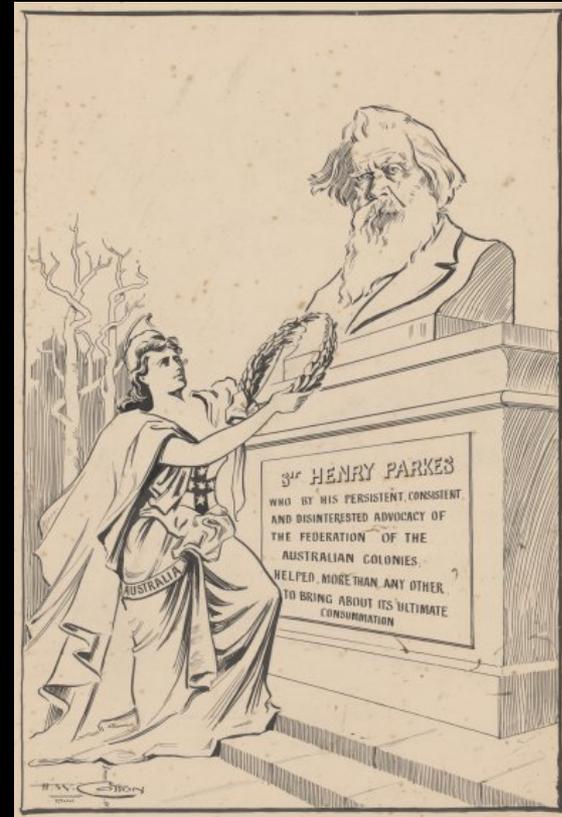


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The History of Australian Copyright 1905 - 1912

- Power to legislate with respect to 'copyrights' included in section 51 of the Australian Constitution (s 51(xviii))
- *Copyright Act 1905* (Cth)



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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



The History of Australian Copyright 1968 - Today



- 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

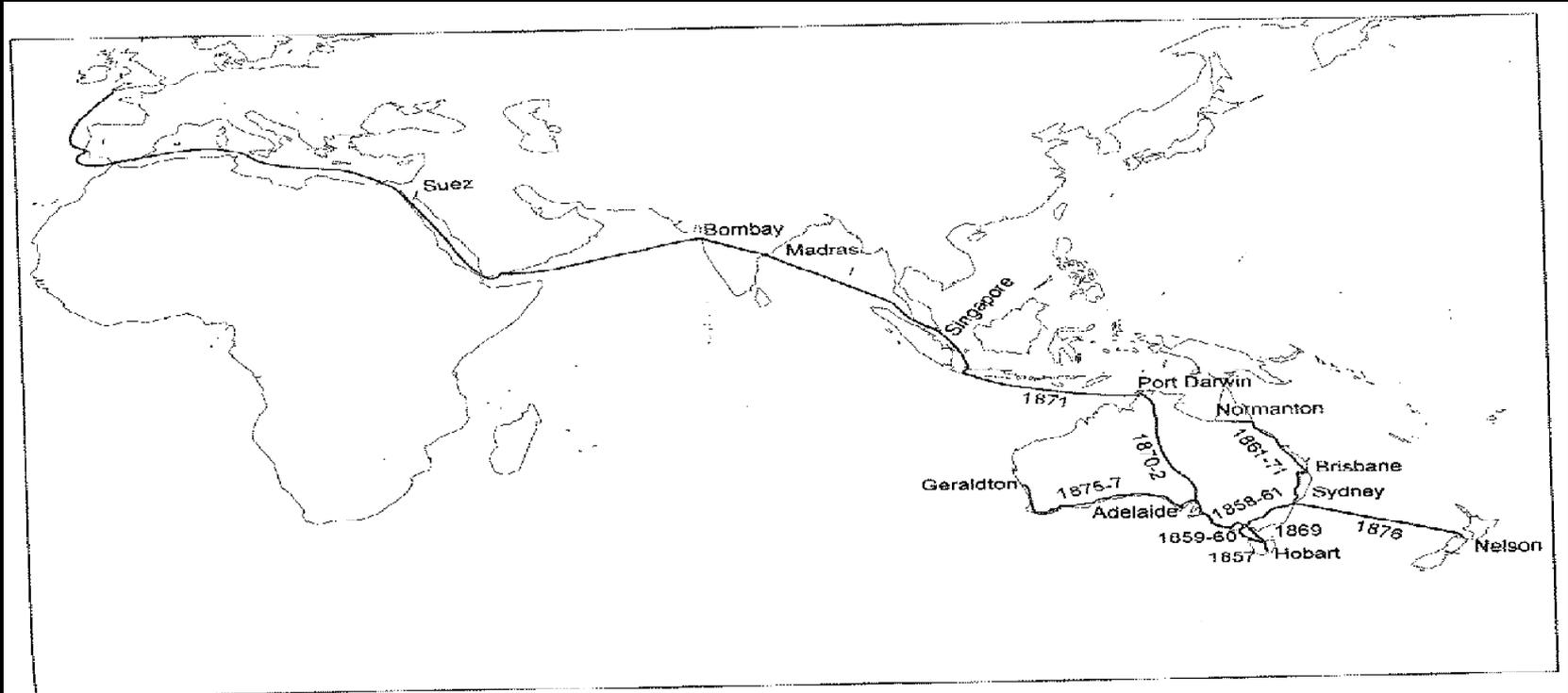


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Term of protection for paintings, drawings and photographs

Artistic Work	Term of Protection	UK Term of Protection
Paintings	14 years	Life + 7 years
Drawings	14 years	Life + 7 years
Engravings	14 years	28 years
Sculptures	14 years	14 + 14 years
Photographs	3 years	Life + 7 years

Telegrams



Overseas cable links to the intercolonial telegraph network, 1871-77

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

Telegrams

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

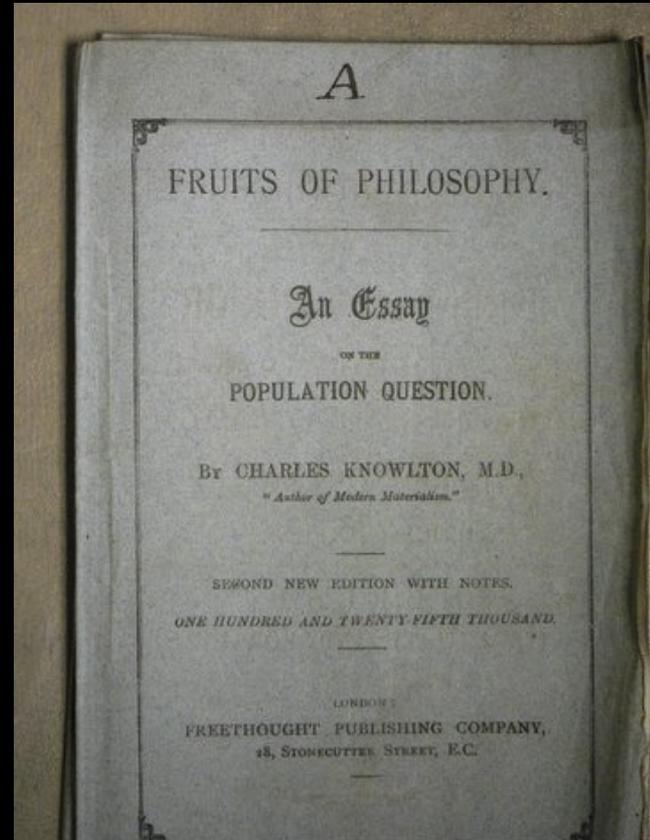
‘Where any person in the manner hereinafter mentioned publishes in any newspaper any message sent by electric telegraph from any place outside the Australian colonies, **no other person shall**, without the consent in writing of such first mentioned person or his agent thereto lawfully authorized, **print 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

Statute	Protection from Publication	Period from which Publication had to occur
Vic, 1871	24 hours (s 1)	36 hours (s 1)
SA, 1872	24 hours (s) 1	36 hours (s 1)
WA, 1872	72 hours (s 1)	80 hours (s 1)
Tas, 1891	48 hours (s 3)	No period specified
WA, 1895	72 hours (s 20(1))	No period specified

'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.'



Lectures

- 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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<http://www.cyberlawcentre.org/unlocking-ip/blog/>