

National and International Dimensions of the Public Domain

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Overview

1. Defining public rights in copyright
2. The global and national dimensions of public rights
3. 10 areas to improve Australia's public rights
4. Where to from here?: What is needed to protect and expand Australia's public rights in copyright?



Defining public rights in copyright



Seeing Australia's copyright public domain as a whole



UNLOCKING IP

Q: What do they have in common?

- The Powerhouse Museum's images collection on Flickr
- Samba, *rsync*, *pppd* daemon, *radiud* authentication server



- Repositories of Australian academic research
- The Moodle & LAMS e-learning platforms

- Screenrights (Collecting Society) and its 'Enhance TV'
- National Library's '[Picture Australia](#)' on Flickr
- Murdoch research team's diagnostic test for African Sleeping Sickness on PLoS
- *YouDecide2007* and *On Line Opinion*



Australasian Legal Information Institute
A joint facility of UTS and UNSW Faculties of Law

[\[Advanced Search\]](#) [\[Help\]](#)

[268 databases](#) from all Australasian jurisdictions

Seeing Australia's copyright public domain as a whole



Answer: All involve public rights in © content + innovation

- They all involve valuable contributions to Australian **innovation** in the area of information goods
- They all involve **copyright works** in which various parties have continuing proprietary (©) interests
- They also involve the public (or classes of **the public**) **having rights to use those works** in ways which involve some of the exclusive rights of the © owner

The Creative Commons slogan 'Some Rights Reserved' sums it up, but most of these aspects of the public domain don't involve CC licences.



Terminology: 'public domain' or 'public rights'?

- **'Public rights'** is used by me to encompass:
 1. The public's rights to use works where there is a © owner, which would otherwise be exclusive rights
 2. Uses of works which are outside the exclusive rights
 3. Uses of works where is no copyright owner (© has expired)
- **'Public domain'** can be used to mean
 - Only 3 above (old, narrow meaning); OR
 - 'All public rights': The sum of 1+2+3 for all works (new, broad meaning)
- I favour using both - reclaiming the rhetorical value of 'public domain' - and will use them largely interchangeably
- **'The commons'** is the only other term broad enough to be used instead of 'public domain' or 'public rights'



Between commerce and commons

- **Caveat:** Both now and in future such works will only be part of Australia's creative landscape – 'All rights reserved' may continue to be appropriate for most creators, most of the time.
- **Past:** The last decade's legal changes have been principally about strengthening © ('all rights reserved'), and have involved much less to stimulate Australia's public domain ('some rights reserved')
- **Future:** We should be trying to get the most out of both methods of stimulating innovation, and see what works over time

It's time to focus on the whole of our public domain



A misleading dichotomy (copyright is a continuum)

- Misleading: ‘public domain’ vs ‘copyright works’
- Almost all works contain both public and proprietary components, on a continuum between two extremes :
 - Purely public: eg a Shakespeare play
 - Purely proprietary?: in practice, an empty pole
- The normal nature of works is to be a composite of public and proprietary rights.
 - Each work is situated at some point along a continuum between the two extremes.
 - An artifact (physical or digital) may embody multiple works located at different points along their respective public↔private continua

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Defining public rights (and the broad sense of ‘public domain’)

- **“Public rights”** are all those aspects of copyright law and practice that are important to the ability of the public [or a significant class of the public] to **use works without obtaining a licence** on terms set (and changeable) by the copyright owner.
- **Corollary:** Private/proprietary rights are the rights the owner of copyright in a work can effectively exercise to refuse to allow another person to use the work, except on terms set (and changeable) by them.
- More accurately, these describe *effective* rights



What is the global public domain?

- **Universal or local?:** Why are some elements of public rights common to most jurisdictions?
 - near-universal adoption of international © agreements (Berne Convention & TRIPS)
 - Global effects of some aspects of the Internet
- **Global:** It makes some sense to talk of a ‘global public domain’ (or ‘global public rights’)
- **National:** But many aspects of public domains are jurisdictionally (ie nationally) determined

Global public domain - formal

- **Berne Convention's constraints** on public rights
 - Registration cannot be required for all rights (A18 etc)
 - Minimum term of life of author + 50 years (A7(1))
 - '3 step test' limits on exceptions (also in TRIPS, AUSFTA)
 - It is a minimum rights treaty (A20)
- Permissive (at least neutral) aspects of Berne
 - Limits on *de minimus* aspects (A2(8) (eg 'news of the day', 'miscellaneous facts')
 - Areas left open for national decision (eg compulsory licensing; fair use; legal materials; duration of moral rights)
- US 'multi-bilateralism' ('unilateral globalism'?)
 - Term extension (Life + 70; 'perpetual © in instalments'?)
 - Stronger technological protection measures (TPMs)

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Global public domain - informal

- **Internet and search engines** - global commons for searching texts?
 - achieved for author-published Internet texts
 - uncertain for all texts (Google book search etc)
 - eggs of ‘commons by friendly appropriation’
- **Viral licensing** - content-specific commons
 - Free and open source software (GPL etc);
 - Collaborative encyclopedic text (Wikipedia etc)
- **Pre-Internet limitations on surveillance capacities**
 - global ‘private use’ commons

Elements of Australia's national public domain

Ch 2 of Innovations Submission sets out this analysis

- 3 elements determined by **formal law**
 - Scope of / limits on subsistence of rights
 - Exceptions to rights
 - Extinguishment of rights
- 3 elements determined by **informal practices**
 - Voluntary public licences (take-up and limits)
 - De facto public rights
 - Effectiveness supports and constraints
- **Conclusion: The national elements of our public domain are significantly different from the mix in any other country**

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Distinctive elements of Australia's copyright public domain

None are unique, but the combination is distinctive

- Lack of any constitutional limits on © (probably!)
- The long history of legal deposit requirements
- Crown copyright in legal/administrative documents
- No significant other limits on the scope of © subject-matter
- Protection of compilations perhaps even beyond the EU
- Narrow, specific, fair dealing exceptions: inflexibility
- Limited implied licences, broad authorisation doctrines
- More extensive compulsory licences than many other countries
- Highest international level of © duration, but no retrospectivity
- Moral rights, but only co-extensive with economic rights

Result: Overall, Australia is inhospitable to the public domain, but with significant exceptions/moderating factors



10 areas to improve Australia's public domain

This analysis suggests areas where improvements are possible:

1. The scope for further exceptions to copyright;
2. Legal deposit's role in the public domain;
3. Finding missing rights-holder (orphan works);
4. Enabling open content licensing to thrive;
5. Maximising the value of open source software;
6. Moving toward open standards;
7. Coexistence of collecting societies and public rights;
8. Re-usable government works;
9. Public rights in publicly-funded research;
10. Indigenous culture's relationship to the public domain.

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1. Scope for broader exceptions?

- **Problem of the '3 step test'**: Berne Convention A9(2) and AUSFTA limit exceptions to © to 'special cases that do not conflict with a normal exploitation of the work... and do not unreasonably prejudice the legitimate interests of the right holder' - now also s200AB.
 - Australian and international scholars nevertheless argue that there is still considerable room for exceptions based on public interest considerations
- **Would 'fair use' give more balance?**: We only have very narrow 'fair dealing' exceptions to copyright. Should we enact a broader 'fair use' exception just like the USA?
 - Recommended by CLRC (1998). Hard to see that we could then breach Berne or the USFTA, though some argue we would.
 - We have the worst parts of US © law, why not the best parts too?
 - Cultural institutions and Internet practices would benefit from more flexible exceptions



Other issues of the scope of ©

There are other similar issues that need review:

- **Should contracts over-ride exceptions to ©?**
 - CLRC (2002) said they must not, but ignored
- **What is a ‘work’?**
 - If law is unclear on what is a ‘work’: what is 10%?
- **When can we rely on implied licences?**
 - Many uses of work rest on implied licences: *CAL v NSW* shows our law is too narrow
- **Does ‘authorisation’ extend © too far?**
 - Can services using new technologies like P2P be too easily inhibited by fears of ‘authorisation’?
- **Are the exceptions to TPMs broad enough yet?**
 - For example, where TPMs cause privacy invasions

2 Legal deposit's role in innovation

- **Problem:** When © expires, how can we be sure there is a copy available for reproduction and adaptation (ie innovation)?
 - Worse, now © is extended 20 years, and works are digital
 - Only 20% of US feature films from the 1920s are in public archives
- **'Legal deposit' systems are essential** to the public domain
 - Current enquiry into extending our scheme to audio-visual and digital works: essential reform
 - Must guarantee all deposited works are available for re-use at expiry of © term
 - Needs to both authorise 'passive' deposit (eg Pandora; broadcasts) and require active deposit of other published materials in an accessible form (eg no TPMs, or access exceptions)
 - Difficult issues about the amount of use allowed before © expires

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3 Finding missing rights-holders

- **The orphan works problems:** 2 flavours –
 - If you can't identify, or locate, the author of a work how can you get a licence to use it?
 - If you don't know if the author has died, how do you know if it is in the public domain?
- A problem for publishers, film-makers, cultural institutions, CAL etc
 - Inhibits innovation, often unnecessarily
- **How to balance innovation and author's interests?**
 - US © Office recommends a statutory licence to use, after a 'diligent search', and subject to contingent payment for use
 - CLRC, 1993, found considerable support for something similar
 - Other schemes involve hearings before a Tribunal (eg Canada); or giving a collecting society the right to negotiate a licence and collect fees
 - Do we need national registers to help identify and locate creators?

4 Enabling open content licensing

- **Voluntary licences** creating public rights in content are becoming much more common
 - Creative Commons (2,000 sites, 100K pages) and ASharenet (4,000 objects) usage [largest in Australia](#) (2007)
 - UGC sites (eg Flickr) involve millions of Australian © works
- **They are socially valuable:** A uniform method of expanding authors' choices in how their works may be used
- **Issue:** Is the legal status of the licences sound enough?
 - Will normally be effective as permissions to breach ©
 - Revocability of non-contractual licences may be a problem
 - Australians use both Australian and 'generic' CC licences
 - Can the © Act put them on a more sound footing
- **Issue 2:** Can you dedicate a work to the public domain?
 - Can you do so earlier than 'life of author + 70 years'?
 - Difficult to make it irrevocable at present
 - Difficult to get rid of moral right of attribution

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5 Maximising the value of open source software to Australia

- **Viral licensing:** Most (50%) open source software is licensed under the viral GPL (General Public Licence)
 - Effective in expanding the public domain
 - Important to Australia because of small local commercial software production: sharing is a better deal
- **Issue:** Are open source licences on an sound footing?
 - GPL is a universal licence, but GPLv3 is less US-centric
 - No significant legal issues in overseas cases yet
 - Law reform review needed to identify any potential problems
- **Australian government support for open source**
 - Can government support for, and use of, open source software build better software infrastructure for Australia?
 - Should donations to support open source development be tax-deductible?

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6 Moving toward open standards

- **Open standards are ill-defined:** common elements –
 - Adopted and maintained by a non-profit organisation
 - Developed by an open decision-making process
 - Open content: anyone can copy for free or nominal fee
 - Use of standard is not impeded by any patents etc
- **Issue:** Should Australia adopt its own definition?
- Dangers in adopting so-called standards which have risks that some aspects are proprietary
- **Australian government support** and adoption
 - In ICT use, Federal govt has a ‘preference, where feasible’ and SA has a ‘requirement, where not specified’
 - Significant usage in Australia included various government agencies (W3C web accessibility), National Archives (open documents), and Macquarie University (learning objects)

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7 Coexistence of collecting societies and public rights

- **Compulsory licences** make a big contribution to the public domain
 - The public can make use of works without negotiating a licence, on payment of an independently determined fee
 - Much 20th Century cultural innovation is based on this
- **Issue 1:** Do collecting societies make it easy enough for their members to use open content licensing?
 - APRA's conditions for members to self-licence their works are restrictive
 - They say they are discussing alternatives with Creative Commons
- **Issue 2:** Does the public end up paying collecting societies for use of works in the public domain?
 - In Spain a collecting society failed in Court to have a club pay for the performance of works licensed under CC licences
 - APRA has flat licence fees irrespective of what works are played
 - NSW govt standard letters for agencies to advise CAL that they do not wish it to collect fees for use of their materials: Other States?
 - CAL publishes lists of monies owed to non-members. Are they dead?

8 Re-usable government works

- Berne Convention does not require © in “official texts of a legislative, administrative, and legal nature”
 - But Australia still has Crown © in all of these
 - Becoming an international rarity in its restrictiveness
- **No consistent policies** on re-use of govt info across Australia
 - NSW & NT issued public licences for legal materials
 - 52% of NSW Govt web data cannot be used for any purpose
 - Federal policy favours non-exclusive licensing
 - Qld Spatial Information Council has recommended most Qld Govt info can be licensed under a modified CC licence
- **Should there be a seal** for ‘Re-usable government information, even if a uniform licence across government is impossible?’
- Does the CLRC’s anaemic Crown © review need re-doing?



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9 Public rights in publicly-funded research

- **Does the public need better access to research outputs?**
 - Cutler (2007) sees a ‘mindless obsession’ with commercialising research rather than its rapid diffusion
 - Australian Research Council rules are changing (slowly) toward requiring free public access to research outputs. Why not make it a grant condition?
 - Do Universities publishing such research outputs in repositories need some ‘Safe Harbour’ protections?
 - Should this extend to past research outputs as well?
 - Should the same apply to postgraduate research theses?
- **Open access to research data**
 - ARC now requires research data to be published in an open access repository within 6 months, or explain why
 - NH&MRC does not yet go quite so far

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10 Indigenous culture's relationship to the public domain

- Indigenous culture is a major source of innovation in Australian cultural practices.
- **Two major sources of issues** in ©:
 - Indigenous people were the unwilling subjects of many previous literary works, images etc, which others now want to make part of the public domain
 - The applicability of 'life + 70 years' and similar rules for entry of indigenous culture and knowledge into the public domain is questioned
- Various studies are now attempting to develop Australian answers to these questions
 - Australia one of 2 countries to vote against the UN Declaration on the Rights of Indigenous Peoples (2007) which included very broad principles of indigenous control

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Where to from here?

What's needed to protect & enhance Australia's public rights?

- An approach based on both principles & compromise
- A peak organisation for the © public domain
- A Charter of public rights in copyright
- A law reform review of the *Copyright Act* focusing on public rights
- Positive strategies and public messages

* *Terminology: '© public domain' or 'public rights in ©'?*



1 An approach based on both principles & compromise

- Principles
 - Key principle that copyright today is equally about author's rights and the public's rights
 - Respect for author's rights
 - Public rights need separate representation
- Compromise
 - The Berne Convention, AUSFTA etc are permanent features requiring accommodation
 - Reasonable people and reasonable positions are found on all sides of debates about copyright
 - Copyright maximalists and copyright abolitionists should both be rejected/ignored



2 A peak organisation for the public domain

- Purposes
 - To enable all bodies supporting the © public domain to be regularly informed about ‘the whole picture’
 - To endorse a broad Charter of common principles
 - To coordinate/understand who is taking action on any given principle/issue
 - To make joint statements/campaigns where needed
- Doesn't the [Australian Digital Alliance](#) (ADA) do this already?
 - Its [membership](#) seems too narrow (Unis + cultural + Google)
 - Its [Principles](#), while excellent, seem too limited
 - Its [statements](#) and [submissions](#) are excellent but limited
 - Its name does not suggest its breadth of mission, or even non-digital works

***Q: Would a strengthened/expanded ADA be the best peak body for public rights in Australian copyright?
Or is a new body needed?***



A peak organisation for the © public domain

Desirable parties to a peak body for the © public domain

- Australian Consumers Association (CHOICE) (Consumers pay for monopoly rights)
- Public rights licensing bodies / user organisations
 - Creative Commons Australia, AShareNet etc
 - Open source software and open standards organisations/providers
 - Open content supporters (scholarship; collaborative works; repositories etc)
- *** Cultural sector organisations (representing Libraries, Museums, Archives etc)
- *** Education sector bodies focusing on research/teaching access
- 'Access to PSI' user bodies / major PSI providers (eg ABS; BoM)
- *** Supporters of broader digital search rights (eg Google)
- Someone (who?) to represent 'users' of other compulsory licences?
- Someone (who?) to represent providers of user-generated content (UGC)
- Research bodies with a focus on the public interest in ©
 - CyberLPC (UNSW), MediaLC (Melbourne); BFG (QUT) etc
- Civil liberties organisations (pro-access or anti-surveillance) (EFA, Privacy Foundation etc)

Most of these sectors (except ***) are absent from ADA's 36 current institutional members



3 A Charter of public rights in copyright

- Australian Digital Alliance's (ADA's) 7 [Principles](#) (1998):
 1. Balanced © laws in the interests of society as a whole
 2. recognising public interest in A2K, innovation etc
 3. 'carrying forward' of fair dealing and exceptions into digital environment
 4. 'appropriate and flexible compulsory licences'
 5. Limiting © to expressions, not ideas etc
 6. Limiting liabilities for breaches 'where compliance cannot practically or reasonably be enforced'
 7. Opposing technological or contractual measures being allowed to distort the balance of rights
- Valuable and groundbreaking for 1998 (and **still valid**), but too limited as a 2009 Charter of public rights in Australian copyright:
What needs to be added?



New elements for a 2009 Charter of public rights in copyright

What additions are needed to ADA's 7 Principles in 2009? 10 suggestions:

1. Expansion of 'fair dealing' toward broader / more flexible '**fair use**'
2. More allowance for **transformative uses** of works as fair uses
3. Expansion of **legal deposit** requirements to digital and audio-visual works
4. Support for specific **new compulsory licences**, including for orphan works
5. Support for the role of **voluntary licensing** systems (open source, CC etc) in expanding the public domain - including by legislation if necessary
6. Collecting societies and compulsory licences **must not impede** their members' use of voluntary licences or collect in relation to content intended to be fee-free
7. Public Sector Information (**PSI**) should generally be open content
8. Outputs of **publicly-funded research** should be in public repositories, and some should have re-use rights
9. **Minimum criminalisation** of copyright law and no strict liability
10. Expansion of '**safe harbours**' for intermediaries, including in relation to UGC, social networking and scholarship repositories, and offences



4 A public-rights-focused law reform review of the *Copyright Act*

- The Unlocking IP Project's 107 page submission 2008 to the [Review of the National Innovation System](#) concludes:
“... the Innovation Review should recommend that **the Australian Law Reform Commission should be given a reference to review the role of public rights in Australia's copyright law** (or preferably in all intellectual property laws). Such a review with the public domain as the focus of enquiry has never taken place in Australia, or perhaps anywhere ...”
 - Cutler Report ignored this, but it is still needed
- Cutler Review recommendations re © and innovation:
 - ‘To the maximum extent practicable’, ‘Government funded content’ (PSI and scholarship) should be ‘available as part of the global digital commons’ (CC licences recommended)
 - A National Information Policy to ‘scan Australian institutions’ to optimize generation/dissemination for public benefit



5 Positive strategies and public messages

Whether through a peak body or its members, support for Australia's public domain should not be defensive

- Positive and constructive tools, involvements
 - Open source software - the biggest success
 - Creative commons licences - making it good to give
 - Wikipedia and Wikimedia - constructive public collaboration
 - Compulsory licences that work well for everyone
- Slogans, brands, success stories and logos
 - CC's 'some rights reserved' is a good slogan
 - CC Australia's commons directory
 - [House of Commons](#) blog
 - Multi-purpose logos like 'Re-usable public information'
- **Perhaps even a mascot ...**



Norman Lindsay's *The Magic Pudding* (1918)

- Norman Lindsay (b.1879) wrote [*The Magic Pudding*](#) in 1918 in the closing months of WWI
- Described by Philip Pullman as 'the funniest children's book ever written' ('The Magic Pudding', Wikipedia entry)
- Being the Adventures of Bunyip Bluegum, Barnacle Bill, Sam Sawnoff, the dastardly Puddin' Thieves, and our hero....

Albert, the cut'n'come-again puddin' ...



Albert's magic



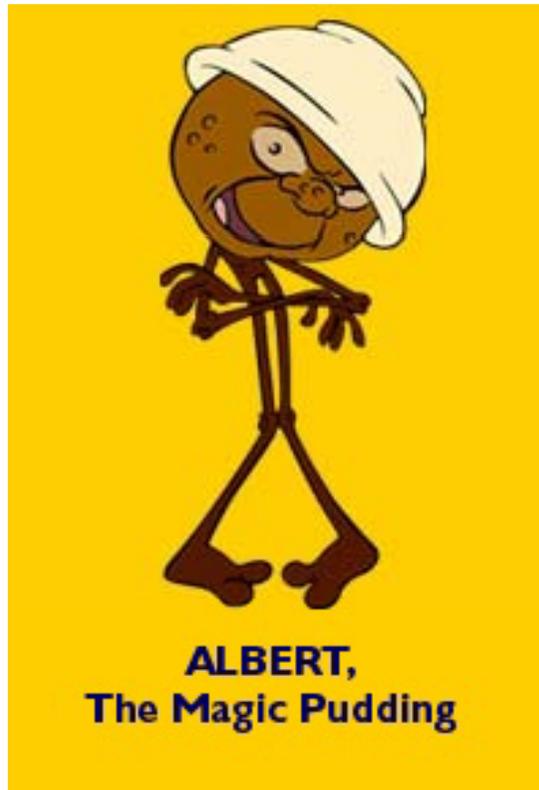
- “There's nothing this Puddin' enjoys more than offering slices of himself to strangers.” (Lindsay, 1918)
- "The more you eats the more you gets. Cut-an'-come-again is his name, an' cut, an' come again, is his nature. Me an' Sam has been eatin' away at this Puddin' for years, and there's not a mark on him.” (Lindsay, 1918)
- Is this the perfect allegory for Australia's public domain, the self-renewing resource that feeds creativity?

**Should Albert be the mascot
for Australia's public domain?**

He embodies all its contradictions...



Albert is not always in good taste



A constant source of 'inspiration'

- The 1970s puppet shows ...
- The worst of US cinema ...
- Even post-modernism: "Let it be said, however, that Albert The Pudding deftly and cunningly presages post-structuralist feminism. The Pudding KNOWS that an economy driven by binary oppositions defies, as it posits, the notion of equality. ... Albert KNOWS that absorption between Man and Woman, pudding thief and pudding, is never really a matter of mirror images." (*Mutable Protagonist*, date uncertain)

His “treacherous ‘abits” #1

- *P.P. McGuinness, 2004: As with all similar stories in popular cultures, there ‘is always a catch, a hidden trap, or a built in punishment for being too greedy. The magical gift is not to be abused.’*
- *Isn’t this also true of public rights in copyright? If they were to be allocated too generously, there is a risk that the incentive to innovate will be stifled, but if they are too limited, both socially valuable uses by consumers, and incentive to follow-on innovators, may equally be stifled.*



His “treacherous ‘abits” #2

- Albert’s most treacherous ‘abit was that he was always trying to escape, to find a new owner.
- Is this the danger that the public domain faces from TPMs? - escaping from ©, only to be locked up again?
- “You have to be as smart as paint to keep this Puddin' in order. He's that artful, lawyers couldn't manage him.” (Lindsay, 1918)

**That’s the challenge, isn’t it?:
to manage our magic puddin’, Australia’s public domain?**



Can Albert be our mascot?

- So, because of his generous nature and larrikin spirit
 - and despite (or because of) his “treacherous ‘abits”
 - Albert seems the perfect mascot for Australia’s public domain
- But where is he? - is he in the commons so that he can be re-mixed and re-purposed?
- **We need to send out a search party ...**



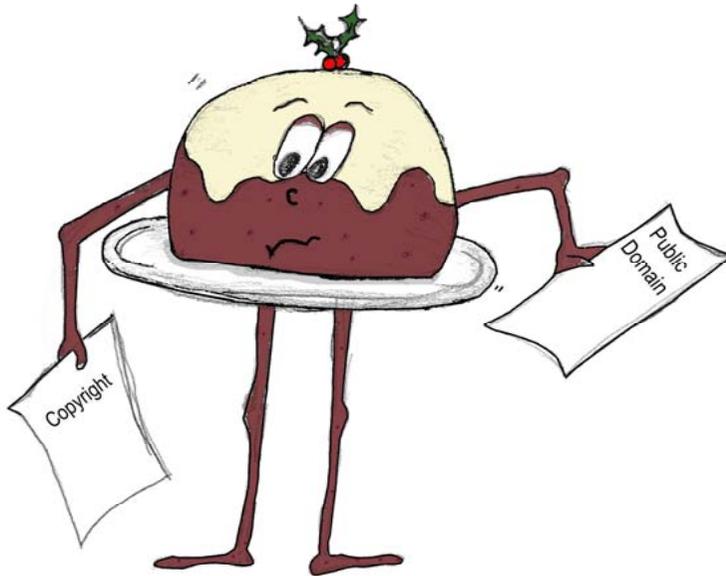


Searching for a public domain pudding

'Christmas Summer Pudding 2005', uploaded on Flickr on 25 December, 2005 by Helen K, at <http://flickr.com/photos/helenk/77328980/sizes/l/>; Creative Commons: Attribution-Noncommercial-Share Alike 2.0 Generic.



Where's Albert? – Is he in the commons?



* This ain't 'im: it's Abi and Sophia's
'Public domain pud' (2008)

- *The Magic Pudding* was published in 1918.
- Norman Lindsay died in 1969 - do the math!
- The real Albert is still © until 2039, when he turns 121
- Even without the AUSFTA, we would still have to wait 10 more years until 2019 (when he is 101)
- Should national cultural icons be © for over a century?
- **Albert symbolises both our problems and our aspirations: the 101 year old cultural icon, still a 'prisoner' of ©**



But Albert lives! - on the web

- But you can find images of him...
 - In the [‘National Treasures’](#) of the NLA
 - In the Meers Collection of NSW Library - complete [exhibition guide](#)
- You can also find the full text and original book illustrations in the [US Project Gutenberg collection](#), allegedly in the public domain and available for re-use, but read the fine print ...
 - 1.D. The copyright laws of the place where you are located also govern what you can do with this work. Copyright laws in most countries are in a constant state of change. If you are outside the United States, check the laws of your country in addition to the terms of this agreement before downloading, copying, displaying, performing, distributing or creating derivative works based on this work or any other Project Gutenberg-tm work. The Foundation makes no representations concerning the copyright status of any work in any country outside the United States.
 - Why is the text there?: Never registered under US © law?
 - What does this mean?: Albert exists in the **twilight zone of the commons**; because of the Internet, part of the global commons for free access; however, as far as re-use is concerned, still © in his homeland until 2039, but already free for re-use in the USA.

Albert epitomises the complexity of the commons



Albert ain't no orphan

- Albert is famous, his father's date of death well know, and his owners relatively easily to locate: we could request a licence.
- But what about a more obscure work born in 1918?: could we even find whether it is now part of the commons?
 - National Library etc may not know dates of death of more obscure authors (if the work is there at all)
 - Australian Society of Authors only has a minimal site assisting location of current authors
 - CAL collects royalties for thousands of works whose authors it cannot locate
 - There was a national copyright register up until 1969: voluntary (in order to get extra remedies), incomplete, and not yet digitised (a few metres of shelf space in the National Archives): But they could find no record of a *Magic Pudding* registration
- Much of our past culture is orphaned: unknown whether it is commons, but also unable to be licensed. The 'creative archive' is locked away from any legal creative use.

**To reclaim Australia's past in order to create our future culture,
we need a right to use orphan works,
after diligent search for their owners, with a contingent liability to compensate.**



So here's to Albert: the renewable, cut'n'come-again resource; the larrikin with dangerous 'abits needing good management; the 91 year old icon still © here but 'free' elsewhere - Australia's contrary symbol of the complexities of commons

