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SUBMISSION TO PRODUCTIVITY COMMISSION ISSUES PAPER:
COPYRIGHT RESTRICTIONS ON THE PARALLEL IMPORTATION OF
BOOKS.

PERSONAL BACKGROUND:

I speak from the point of view of an Australian writer first published in 1964, and thus with some knowledge of English language book markets, pricing and publishing viability. I also grew up in a family to whom the price of books in Australia, particularly educational and technical books, was a challenge to the domestic budget. Thus this submission is not based on any desire to see families or individuals struggling to meet artificially high prices for books. I also respect those booksellers who have a sincere desire to reduce book prices by bringing an end to parallel import restrictions (hereafter, PIR) and thus to effective territorial copyright. Many of them are friends, and have supported other writers and myself throughout the years. I believe, however, that they are mistaken in their belief that abolishing PIR will reduce prices in a sufficiently significant way. I also believe that the same time it will do substantial and probably irreparable harm to other sections of the book business.

MOTIVES:

The cry from the uninformed often goes along these lines: of course the Careys and Keneallys would argue against the abolition of Australian copyright. They have much to lose.

If it were so I would consider it improper for me to make a submission arguing general cultural points, while all the time being merely concerned for income.

In reality the internationally known and internationally published writers have little to lose. Our books will go on being published in the U.K. and the U.S., and copies will be – in whatever number – imported into and sold in Australia. But it is the beginning writer who hopes to make his/her way into the international market by way of Australian publication who will lose. Similarly, it is the writer who makes a career of writing for Australian publication alone, the kind of writer who has proliferated in Australia since the early 1970s, who will suffer most.

PRICE DIFFERENTIALS:

I am not qualified to argue the matter, except impressionistically, on exact price differentials between American books sold in the U.S. and the same books produced and sold in Australian editions here: or between British books sold in Britain as against the same books produced and sold here.

But I am aware of some general principles. In claiming - as a former minister Senator Richard Alston did in a press statement of March 13, 2002 – that the PIR mean that Australians pay more than Britons for paperbacks and technical books (he does not differentiate whether produced here or imported), people are not *necessarily* identifying avarice on the part of copyright holders, publishers and booksellers, but rather acknowledging reality.

For the reality is that many imported overseas books will always cost more here, specifically because of our distance from other English language centres of publishing. The abolition of PIR will never do anything to help that.

As well as that, the Productivity Commission might well take into account the economies of scale which bring down the unit cost of printing, promotion and distribution in American publishing, and to a lesser extent in British publishing. These economies do not exist here purely because of population difference. No alteration to the present provisions will alter that reality either. For example, I know from personal experience that a book high on the *New York Times Paperback Bestseller List* for a month can confidently be expected to sell at least two million copies. A bestseller on a similar Australian list, whether local or imported, generally sells well under a hundred thousand copies, and only in very

rare circumstances - such as in the heyday of Jeffrey Archer - up to three hundred thousand. (The worldwide phenomenon of J.K. Rowling might well exceed these limits, but even in her case her sales in the U.K. or United States would in each case be massively greater than in Australia.) The affordability of imported books in Australia is also influenced by the vagaries of the Australian dollar. It is therefore a benefit to the public if Australian publishers are able to produce and print foreign books here. But will they still be able or willing to continue to do that if PIR are eliminated?

Since the last amendments to the Copyright Act in 1991, the bookselling market has become more diversified by the appearance of cheap but quality books in such mass-market stores as K-Mart. Here books are discounted to levels affordable for most readers, and so downward pressure has been put on many book prices generally to the benefit of readers. Various forms of technological access to books may possibly have also driven book prices downwards. I note that the Productivity Commission wisely suggests that much more solid, robust and overriding statistics need to be produced to justify change, and above all that such statistics not be interpreted simplistically.

For example, comparisons of the book industry with the record industry, in so far as they attribute any fall in record prices to the 1998 abolition of PIR, do not take into account the impact of Internet music sites on the Internet and piracy on making prices more attractive. It is the opinion of many performers and others (including the informally expressed opinion of Peter Garrett, Minister for the Arts) that legal and illegal technological reproduction has had a – or even *the* - major influence on prices.

ECONOMIC IMPACT ON WRITERS OF REMOVAL OF AUSTRALIAN COPYRIGHT:

The Productivity Commission asks, “To what extent is access to an Australian publisher more important for a debut author than one with a track record?” It is very important to both in different ways. Amongst other things, however, for the debut author who, under the PIR, has sought Australian publication first and then

British publication as a second step to an international career, abolition of PIR will force a choice between the two and raise the possibility that should an Australian author choose the British path, questions about the number of his/her books to be made available here is left to the judgment of barely informed foreigners.

So the options for the beginning writer will be:

- (1) To be published here by publishers whose resources to market and distribute books will be severely attenuated because they can no longer depend on Australian copyright, and who cannot thus extend advances that enable writers of that nature to live on their royalties or to proceed to a second book;
- (2) or to submit for publication in the U.K or U.S. first – a test which will screen out the majority of writers on the glib basis of: “Oh, the book is too Australian to interest our readers.”

As for those who write for the Australian market, a scan of my own bookshelves reveals invaluable and successful Australian books of which this latter point is true. They include David Day's biographies *Curtin* and *Chifley*, Les Carlyon's *Gallipoli* and *The Great War*, Inga Glendennin's *Dancing With Strangers*. These latter would still be published here of course, but I fear it will be without the resources of marketing, distribution and visibility which the existing Australian publishing industry is able to provide to a wide range of such books under the guarantee of Australian copyright based on PIR.

For there seems to be credibility to the argument of those publishers who say without PIR as it exist now, they would be in less of a position to provide the warehousing, promotion and other services to Australian authors. Both authors and literary agents, particularly those whose interest is explicitly Australian, would be facing shrinking resources and contracts. I spent my early career in an Australia in which Australian books were in general poorly designed, poorly promoted and often derisorily distributed, and as an Australian reader and citizen, I don't want to go back to that..

SOME FURTHER CULTURAL AND ECONOMIC ASPECTS

So, to expand on the above:

- (a) When I was first published in 1964, the vast majority of books bought and read in Australia were imported. The native product was sparse. This was not due to copyright reasons, however, but to the fact that Australian publishers were small-scale and could not afford adequate distribution and publicity for their titles.
- (b) Australian literary culture was thus divided into two classes. Firstly, there were writers published in the U.K. and imported to Australia – being, by the way, paid a reduced “colonial royalty” for books sold in their own country. Secondly, there were books published in often small print-runs in Australia by authors who generally received little encouragement either in terms of readership or income.
- (c) If you will bear with this argument a second further: Australian writing was divided into the nativists and the internationalists. Cultural stigma attached in various ways to both. The nativists had very little income but the moral comfort of being true Australians; the internationalists had a better income but the moral discomfort of being seen as mercenary. The whole argument was in turn dwarfed by the massiveness of international publishing which did whatever it wanted with Australia. Like Trinidad and Tobago, it was just one of those distant possessions which were listed on attachments to British book contracts. But one would reasonably ask: what does this touchy matter of the past have to do with the industry of writing and publishing now?
In fact it has much to do with it. The proper exercise of Australian copyright in modern times has created a culture in which Australian writing is viable in its own country as it never was before. The famous Sydney book-seller Walter Stone warned me in 1964 not to expect to make a living out of writing. Now there are many, many writers who are able to pursue a full-time career by writing Australian books and, in some cases, having them published overseas. To name a few amongst

the many: John Marsden, Louis Nowra, Pamela Allen, Garth Nix, Richard Flanagan, Christos Tsiolkas, Anna Funder, Helen Garner. Their success is based on personal merit, but also on the backing publishers can provide their books under the security of PIR Australian copyright. On top of that, though, we also have a situation in which most Australian writers living in Australia choose Australian publication first and not – as in days past – by grace and favour of foreign publishers. The reason for this arrangements – whose appropriateness I shall argue later - is PIR as guarantor of territorial copyright within Australia. Of course territorial copyright would still exist, but since it would be without protection it would increasingly tend to be something picked up by British publishers, with a consequent return to a demeaningly colonial and post-colonial arrangement.

ILLUSORY TIMELINESS

The Productivity Commission asks, “Has the structure or nature of the books industry changed in recent years in ways that bear upon the benefits and costs of parallel import restrictions?” For the reader the question of access to English language books has already been made more timely by the PIR, and for those readers interested in instant access technological changes such as on-line purchasing, e-books, devices such as Kindle, or printing-on-demand have virtually obliterated any question of timeliness of access of Australians to all English language trade publication books. If a reader does not wish to wait as long as the 30-day rule imposes, he can access the book from such sites as Amazon.com or order an imported copy through his bookseller. The booksellers also know long beforehand whether a particular title will appear here or not, since they can tell this from direct contact with the publisher, from publishers’ catalogues and other sources, and can import within to the provisions if the book is not to appear here. The abolition of PIR and an entire writing-publishing-printing ecology for the sake of thirty days maximum delay would seem reckless, and has certainly not been considered rational by the British and Americans.

British PIR ensure that many American titles do not reach Britain or are not published there until months after American publication. But neither the British government nor the British publishing industry have contemplated the benefits of British territorial copyright for the sake of a timeliness which in the case of most contemporary book-buyers is irrelevant.

The other consideration is that Australia is unique in having the 30 day rule – the British and American copyright areas are hermetically sealed from each other, and no books from the American copyright territory can be sold in the British copyright territory and vice versa, no matter what the delay and what the price differential.

DIRECT SUBSIDIES TO AUTHORS, PUBLISHERS AND PRINTERS

Given my fears, I cannot imagine any complimentary policy which would make up for the removal of PIR. The very argument that some alternative policies should be considered indicates an awareness - or else a strong suspicion - by those who wish to see PIR removed, that the book-creation industry in Australia would be damaged. One of the reform options is that “an alternative might be some form of subsidy to Australian authors or publishers to provide them with a comparable level of support to the parallel import restrictions...” The present arrangements of subsidy are important to individual writers but are too intermittent and haphazard to do serve across the industry. But such a subsidy on a scale to make up for PIR is unlikely to be politically viable, guaranteed or permanent. Would such a subsidy survive economic downturns, razor gangs, changes of policy and of government? There is the question of how these subsidies would be distributed to writers and by what new statutory body – over and above federal and state patronage available on a largely intermittent basis to writers now. And would subsidies yield the rich book culture, permit the excellent book design and encourage all the other benefits which operate across the present system?

EVIDENCE TO SUPPORT CONTENTIONS

Wisely, the issues paper asks: "What evidence is there to support the contentions of the supporters ... of the current provisions?"

Those who stand for territorial copyright as protected by PIR have established success to point to, and a functioning national institution which enjoys considerable support from the public.

Those who oppose it have unrealized and possibly unrealizable expectations or suspicions, and objectives which will stunt the national publishing industry to a greater or lesser degree.

REFLECTION ON "SOME QUESTIONS"

The Productivity Commission asks, "Do cultural benefits arise from the existence and output of authors per se or from the creation and dissemination of particular types of stories and writings? How large are these cultural benefits relative to the other benefits associated with books?"

On the one hand these questions seem unanswerable in concrete terms, as elusive as quantifying happiness or misery. But there is no doubt that cultural benefits are palpable and that communities express their value and welcome them.

All the questions centred on p.10 of the issues paper can perhaps be answered in these terms: No literate society has ever doubted the immeasurable benefit of a native literature whether the works cherished dealt with or transcended identifiable national issues. Could one imagine a Briton being asked either to quantify or to defend the cultural value of a Shakespeare or a John Milton. Very well, few of us might be in that class! So let's ask: could one imagine a modern Briton being asked to quantify in cultural terms a Doris Lessing, Martin Amis, Sadie Smith or Margaret Drabble? For there are a number of Australian writers in their class. Or imagine an American reader being asked to set a value on Don de Lillo or Alice Walker?

May I suggest that all the questions asked in paragraph 2 on page 10 and throughout that page of the paper are in precise cultural terms unanswerable.

Cultural benefits derive from both sides of the either/or alternatives given throughout. The questions seem to suggest that the alternatives are polar, not complementary. The cultural benefits arise from foreign works in so far as we are members of an international community, but the cultural benefit attaching to Australian works, given our book-buying choices, is obviously a matter of great value to Australian readers.

I would like to comment on one statistic. The 2001 Books Alive survey found that only ten percent of Australians purchased a book on the basis that it was by an Australian author. This statistic might be used by some as a sign of cultural indifference, but cultural indifference is not reflected by the numbers of Australian books bought by Australians – a statistic the ABPA will no doubt inform the Productivity Commission of in its submission. Australian books are now, compared to when I first began to write, so much part of the norm that overt cultural drum-beating would rarely be the overriding motive for buying Australian books. All the statistic shows is that Australian-ness, or the work of Australian authors is now normalized as part of a reader's diet.

The quality of the interior Australian books is the chief issue – other, perhaps, than price.

COPYRIGHT BASED ON PIR: The Productivity Commission refers to the Ergas Committee's 2000 report by saying that PIR granted to owners of copyright material could not be justified in terms of some inherent right that attaches to creative effort.

I know what they're saying, but my first reaction to this proposition was rather like that of Eddie Mabo when he found out that the Crown owned his vegetable patch. The same argument as that of the Ergas Committee could be made for British or American copyright restrictions – and I know what the cultural and legal outcry such a call would generate!

I thank the Productivity Commission for making it possible for all authors to make a submission.

Thomas Keneally