

Productivity Commission Submission

Parallel Importation of Books

Following the announcement of the Productivity Commission's review of certain aspects of the Copyright Act and release of its issues paper, and noting that COAG's motivation for this review is the enhancement of Australia's longer term growth prospects, I am making this submission as an Australian author who is published both domestically and internationally.

While I will not attempt to address all of the issues raised by the issues paper, my more than ten years as a full-time author gives me first-hand experience of a number of aspects of the workings of the book industry that I believe merit the Commission's attention.

The Australian book industry is significant both economically and culturally. Sales gross \$1.5 billion a year, the industry employs tens of thousands of people and books remain one of the key media for recording and imparting information and for telling Australian stories, both to Australians and to people around the world.

Australian publishing has expanded in an environment of territorial certainty, with new Australian titles – once a rarity – now accounting for 60% of the market. A healthy book market requires both a thriving local publishing industry and prompt access to international books. The Australian publishing industry is an industry well placed to make a significant contribution to Australia's longer term growth, if the legislative setting are right.

The price of books

The key argument advanced by proponents of parallel imports is that they would make some books cheaper. A look at the details behind the data reveals that it's not that simple.

For a start, and unlike many countries, since 2001 and the introduction of the GST, Australia taxes books. This accounts for 9% of the sale price of each book, and that needs to be taken into consideration when comparing prices between countries. Comparisons are most commonly made with UK and US prices. In the UK, books are zero-rated for VAT. Books are not subject to a consumption tax. In the US, taxes vary state by state and, in many cases, are applied on top of the quoted price (unlike Australia's GST, which appears as part of the quoted price). This can make prices comparisons misleading.

The effect of GST on any price difference is an issue the government can do something about. This is a playing field that needs to be levelled, and can be. An ideal solution would be to adopt the UK model, and to discontinue taxing books here. Another solution – and one perhaps more likely to be accepted by government – would be to ensure that online retailers such as Amazon levy a GST on any purchases originating in Australia and remit it to the ATO. Amazon already has the capability to do this – US states such as New York require it to apply and collect their taxes.

It is possible that GST revenues of millions of dollars a year are being lost while international retailers are being non-compliant.

Some books, for example international mass-market paperbacks, may have historically cost somewhat more in Australia, but these books have tended to be priced very competitively in recent years. One factor in this has been the emergence of deep-discounting retailers such as Kmart and Big W, as well as discount chains with strong buying power, such as Borders. International blockbuster novels and new books by major Australian authors are very often cheaper than they once were, and hardly ever need to be purchased at the recommended retail price, due to recent changes in the industry.

Some examples include:

- the entire Dan Brown catalogue being widely available at \$12.95 per book during the height of the success of the Da Vinci code in 2004
- Tim Winton's new hardback novel *Breath*, with an Australian RRP of \$45, being available at Big W for \$25.93
- Bryce Courtenay's new hardback novel with a comparable RRP being available at Kmart for \$19.95
- the five-volume series of the *Women's Murder Club* being available in paperback at Kmart earlier this year for \$15 for all five books

Price comparisons with the US and UK are greatly affected by exchange rates. When the issue of parallel imports surfaced mid-year, the Australian dollar was worth close to US 98c. The price advantages quoted for some books at the time no longer exist with the dollar at US 65c. Over the past ten years, the Australian dollar has averaged US 69c and UK 40p in value. Legislation, and any changes to legislation, should never be based on the exchange rate on any given day.

Research comparing prices between countries is also hindered by a number of other factors. In some countries, while it is easy to obtain RRP data, it is not possible to obtain data concerning the prices at which books are actually sold.

Beyond that, research that I have seen into book prices has not adequately taken into account the different formats available in different countries, and the different meanings of commonly used terms regarding formats. US mass-market paperbacks can be cheap, but many books never appear as mass-market paperbacks. The US trade paperback is not the same as an Australian trade paperback, so comparing the prices of US and Australian trade paperbacks is misleading. The US trade paperback is more like the smaller Australian B-format paperback in size, finish and paper stock, and it is not particularly cheap in comparison (at average exchange rates).

The US does not really have a format that compares with our (or the UK's) trade paperback. In Australia and the UK, this format is often used as the original format of

the book, taking the place of the hardback. The US tends to persist with hardbacks, which are much more expensive than trade paperback originals.

Availability – the 30 and 90 day rules

Before the 30 day rule, some books took many months to appear in Australia after being published in the US and UK. This rule has largely remedied that. Australian publishers aim to publish simultaneously with the first overseas editions as often as possible, and the percentage of books which are published simultaneously is increasing.

When books are not simultaneously published, delays tend to be minimal. If they are not, the 30 day rule allows the bookseller to act and source international stock. The 30 day rule maintains an ideal balance that ensures rights holders can sell their rights as they wish, while allowing booksellers and buyers prompt access to books.

The 90 day rule was entirely appropriate in the 1990s, and the principle behind it is still valid. However, with changes in printing, stock management and the way the book market operates, I accept that a case could be made for reducing it to 30 or 60 days.

Section 44A of the Copyright Act also expects booksellers to contact publishers in writing and wait seven days for a reply. Through Title Page and other platforms, publishers have changed the way they manage stock, and the way they keep booksellers informed about stock management. It might now be reasonable for booksellers to be able to operate simply on the basis of information already provided by the publisher concerning reprint and restocking dates, rather than having to contact the publisher in writing.

Parallel import experience in other countries

It has been argued that we should be comfortable about parallel imports because a number of our trading partners already allow them. Most of our trading partners which do so are not predominantly English-speaking, and many of them do not face potential

international competitors in their own language. When it comes to the Australian writing and publishing industry's concerns about parallel imports, the experience in these countries is simply irrelevant.

Japan (one example that has been given) is the world's only major creator of and large market for Japanese-language books. No other country is in a position to dump significant numbers of Japanese-language books into the Japanese market, so Japan can allow parallel imports with impunity. Japan is not a significant originator of English-language books, so has no concerns about dumping of English-language books by US and UK publishers.

Australia faces a world market dominated by two much larger countries, the US and UK, who speak the same language we do, so there are far more books printed outside Australia with the potential to be dumped here, to the detriment of local editions.

So how is this issue handled by other English-speaking countries? The two dominant players, the US and UK, are both closed markets – far more closed than ours. They have no 30/90 day rules. Once copyright for a book is established in either territory, it becomes – and continues to be – illegal to import international English-language editions, even if the book becomes unavailable.

If we were to open our markets to them, they would not open theirs to us. A move to allow parallel imports into Australia would be a move to make the playing field much less level. We would face being swamped by these two giant industries with their great economies of scale, and they would offer us nothing in return.

One English-speaking country that has allowed parallel imports for ten years in New Zealand, and it is instructive to see how New Zealand publishing is faring.

NZ Trade and Enterprise's 2004 report 'New Zealand Book Publishing: Industry Development Issues' stated that 'New Zealand publishers face an inherent problem in that the domestic market is swamped by imports.' Children's publishing, while historically seen as a strength, was seen as threatened, with 'dumping of children's books' listed by NZ publishers as one of the three most pressing issues they face.

While NZ educational publishers tend to fare better than others, due to the need for NZ-specific material for NZ schools, the report says that ‘Trade publishing, i.e. literature and other general non-fiction, are the poor relation to education ... Competition in the New Zealand market from imported books is fierce. Consequently margins are low, print runs are short and rapid remaindering is endemic. The reliable sellers are in areas such as the coffee table books of landscape photos and books on rugby, where there is no direct foreign competition.’ To that might now be added books of Maori tattoos, but any publishing industry that can achieve sales success only with an extremely narrow range of books that have no export potential is in crisis, both financially and culturally.

New Zealand’s publishing industry has changed dramatically since parallel imports have been allowed. Its capacity to produce great novelists of the calibre of those it has produced in the past seems to be seriously under threat. Many of us can name a number of great New Zealand writers. I don’t know anyone who can name a New Zealand author under fifty. New Zealand talent is no longer coming through in the way it once was. I have no doubt that it exists, but it now exists in an atmosphere that denies it the opportunities it needs to flourish.

This is a risk we cannot afford to take here. Australian writers have achieved significant and increasing success internationally since the early 1990s. Tens of thousands of Australians work to write, print, publish and distribute Australian books. It would be economically and culturally disastrous if changes were made that might dramatically slow the growth of the industry and make books other than coffee table books of landscape photos and AFL biographies non-viable.

The Market for Remainders

In 2000, the Australian Attorney-General’s Department’s fact sheet on ‘Copyright Reform: Parallel Importation of Books & Other Published Works’ addressed concerns about international remainders displacing local book sales by saying, ‘Books are generally ‘remaindered’ because they have not met with consumer acceptance. They do not flood the market because they are not what people want to buy ... The changes

would allow the possibility of remainders of books written by Australian authors competing with the Australian publisher's own sales. However, for an Australian author to be so affected they would have to be publishing internationally. This is a very small proportion of the overall number of Australian authors. Further, the author's work would have to be over-produced or the subject of a failure in another market to the extent of making it available cheaply.'

This shows a lack of understanding of how book publishing works, and I sincerely hope this review will ensure it is more informed. For a start, the number of Australian authors published internationally is far from very small. As Australia is a small market, it makes sense for authors to have an export strategy and to treat export seriously. Many authors who write full-time rely partly or substantially on export income in order to be able to do so. We should be proud that Australian writers export our stories. It is culturally and economically beneficial, and something we should foster, not inhibit.

It is very common for a book not to succeed in every market in which it is published, even if it has been a great success in others. When books that have been major successes at home in Australia are subsequently published in the US and UK, it is very unusual for them to succeed in both. That is, a situation is created in which there is at least one market (Australia) in which the book is highly desirable and very much a book people want to buy, even if there is another in which, for whatever reason, the book has not been bought widely.

On top of that, the approach to shelf space that has developed in US megastores means that initial hardback print runs of books there can far exceed the likely sales of the book. Some stores may want hundreds of copies to display, for visual effect, and in most cases many of these books remain unsold and are pulped. On average, 30% of copies of initial hardback print runs in the US end up as surplus.

Hence, it is entirely likely that, due to a range of industry factors, a successful Australian book might find itself in surplus in warehouses in the US or UK. Currently, this risk increases pressure on the US and UK publishers to make the book work in their market, or face pulping surplus copies or remaindering them there. Parallel importation would encourage them to dump the surplus copies in Australia at a deep discount that

would earn them more money than remaindering domestically or pulping them, while selling them here at a price at which the author would receive no royalties or drastically reduced royalties.

In practice, this could not be overcome by attempts to counter it in contracts signed by Australian authors with British and American publishers. For a start, the author is hardly ever in the position of strength in the negotiation and there are real limits to the flexibility publishers allow with their contracts. Even if publishers were prepared to include clauses precluding them from selling the book into Australia, it would have little benefit in practice. Unrelated businesses control remainders, sourcing them from publishers and selling them on. The US or UK publisher would sell surplus stock, legitimately and in their own markets, to the same people they do now – businesses with whom the author has no relationship and no dealings – and those businesses would then be free to sell them into Australia. No contract that the author has anything to do with could influence this process.

Likely financial implications of an open market

Authors would receive 0-33% of their usual royalties for any Australian sales of parallel imported books. If the copies were remaindered and sold at not more than 25% of the US or UK RRP, they would typically receive nothing. The best-case scenario is that the books would be a non-remainder export sale. For export sales, authors receive a percentage of net receipts, rather than RRP. This always leads to a return to the author of much less than a full royalty. Furthermore, international royalties usually pass through two or even three agents, reducing the author's cut. I can foresee no circumstance in which a sale of a parallel-imported edition of a book of mine would earn me the same as a sale of a local edition. Allowing parallel imports will undermine author's incomes.

But there are far greater implications than an immediate, and ongoing, loss of income.

Parallel imported copies undercutting the local edition could destroy the local market for that edition and send the book out of print. No publisher would order a local reprint of a book that could not be priced to beat an imported remainder copy.

Both the author and the publishing company here - the company that had provided all the support to see the book through to its first publication - would suffer. This risk would be a serious disincentive towards Australian publishers publishing new Australian books, and unearthing new talent.

Almost every Australian author who succeeds overseas succeeds here first. Either their book is published here and succeeds and overseas markets take notice, or they are picked up by a publisher or agent here who manages to secure international sales before local publication. Typically, Australian publishers build authors over a few books before success comes along. That takes faith, it takes commitment, it's a long-term investment and requires a long-term view.

Publishers will be a lot less likely to go through that process if the price of success is having the author's backlist undermined by imported editions. They will be reticent to publish new authors. Risks will be higher, so advances will be lower. Fewer people will be able to earn a living as writers. Emerging Australian authors will be forced to try to start their careers by competing directly in New York and London at long range and without track records. This amounts to a distinct disadvantage.

The first time I had meetings with New York publishers, one of them said to me, 'We need a big reason to pick you over the ten thousand people within walking distance of this building who are writing novels.' In the end, they did pick me. They picked my book because I had taken *Perfect Skin* to them in the best shape it could be, having gone through an editorial process in Australia as good as any in the world, and because the book had already proven in Australia that it could connect with a market. These were key ingredients that gave it an edge over unproven manuscripts.

Perfect Skin was published in the US in hardback on 10 September 2001. Due to the terrorist attacks the following day, almost none of the planned media coverage ever ran, and many copies of the hardback remained unsold. Despite this, it came out

subsequently in paperback and was also published in the UK. As a consequence of US and UK publication, it was published in Italy. It happened to be read by an Italian movie star and turned into a multi-million dollar Italian film, which was distributed by Warner Brothers and opened on over 200 screens across Italy and ranked in the national box office top ten. Without the support of Penguin in Australia in 1999 and 2000, that would never have happened.

Writing is a career for me because of a combination of domestic and international sales, and everything that spins off from them (including films, plays and personal appearances). The introduction of the 30 day rule in the early 1990s created the territorial certainty needed for an Australian publisher to back me. If parallel imports had been allowed then, there is every chance that my career would not have started. It would have been too great a disincentive for a publisher to take me on.

Publishing is already a risky business. If we increase the risk we will decrease the publishing.

Substantial changes to international editions

It is common for changes - sometimes substantial changes - to be made before a book is published in an export market, particularly the US. Many Australian references are lost and idiomatic language is altered. These are compromises we make in order to be published in the US, and to communicate specifically with US readers, but for Australian readers the books can be full of jarring references that feel un-Australian (in the literal, and not overused, sense of the word). There's hardly a better way to put someone off reading a book than to do that. If something stands out as inauthentic, it pushes you out of the story, and spoils the reading experience. Some changes also have real potential for confusion, for example, changing 'when I was at uni' to 'when I was at school' - they're simply not interchangeable in Australia.

It is highly unlikely that potential purchasers here would be made aware of the extent of the changes. These books are not the same, but they would be sold as if they were. If they offer a less rewarding reading experience, the author's future sales will be harmed.

There are further implications with children's books. Parallel-imported US editions of Australian children's books would come back here with American spelling, and culturally Americanised. This has the potential to be harmful to the acquisition of literacy skills, as well as coming at a cultural cost. Australian children need to grow up with access to Australian stories, told in Australian voices and that validate the world they live in.

Book titles too can change in other markets. My novel *World of Chickens* is called *Two To Go* in the US, and I've heard from several Australians who have bought it there only to discover it's an Americanised version of a story they have already read. A couple of them have given it as a gift to people who already had *World of Chickens*. Allowing a few thousand copies into Australian bookstores would see this happening a lot more than any of us would like it to.

Conclusions

The Australian book market is now around \$1.5 billion dollars a year, and it provides jobs for tens of thousands of Australians who write, illustrate, edit, design, print, distribute, promote and sell books. Australian publishing creates and exports intellectual property. Australian books are a key part of recording our nation's stories, encouraging the debates it needs to have, and reflecting the nation to itself. The Prime Minister, at his inaugural literary awards, said that Australian writers are 'part of the sinew and soul of our nation'.

Australia already has a more open book market than either the US or UK. The consequences of New Zealand opening its market to parallel imports in 1998 are clearly evident, and profoundly negative. By and large, Australia has the balance right.

The 30 and 90 day rules have created the territorial certainty that the writing and publishing industry requires to operate. Since their introduction, we have seen more authors published, more Australian books sold, improved access to international books and more competitive pricing. These rules have worked. Our territorial copyright needs

to continue to have the certainty they provide. While some fine-tuning to the details of the 90 day rule may be appropriate to consider in light of the evolution of the industry, the principles of the 30 and 90 day rules need to remain intact.

Any price benefits from allowing parallel imports are uncertain, and at best small compared with the potential harm they could cause. The COAG competition reform agenda is 'designed to enhance Australia's longer term growth prospects'. Allowing parallel imports would only hinder Australia's growth as a creator and exporter of intellectual property. Its economic and cultural consequences would be significant and adverse.

I urge you to recommend an outcome that embodies the principles behind the current Copyright Act, and does not forsake Australian territorial copyright.

Thank you for the opportunity to make this submission.

Yours sincerely,

Nick Earls