

3 Key arguments raised in earlier studies

Are these the key arguments for retaining and removing the current restrictions on the parallel importation of books, and how should they be weighed against each other? What other issues should the Commission consider in this study? What evidence is there to support the contentions of the supporters and the critics of the current provisions?

3.1. The argument for retention concerning ‘surrendering’ the local market to overseas companies is particularly valid in the area of primary school educational publishing.

The area of literacy publishing is one in which Australian educational publishers through necessity have been very successful globally, often selling their Australian editions into other markets. However, the pricing of books to meet the needs of developing markets places those particular buyers at an advantage compared to the originating Australian publisher in that they often enjoy abnormally low buying costs.

This export trade relies on the maintenance of Territorial Copyright which is a crucial part of the contractual arrangement between the Australian educational publishers and their overseas distributors/publishers. To remove the protection of territorial clauses in contracts undermines the established contractual relationships between the parties and exposes the Australian originator of the books to having inventory offered by those distributors to Australian wholesalers – with no guarantee that the extra margins will be passed onto the Australian consumers/schools. This also has the effect of undermining the royalty income of the Australian authors and illustrators – the royalties at a reduced rate having already been paid on the deeply discounted overseas sale.

3.2. The argument that the current restrictions allow higher prices to be charged for books in Australia is invalid in the area of primary school educational publishing.

The Australian education market is already over-published in terms of number of titles released into the market in any year. Evidence can be found in the number of text series that languish and fail to return profits to their publishers in the home market. This forces Australian educational publishers to seek export markets for the print runs they cannot turnover in a reasonable period within the domestic market.

The Australian educational publishing industry is over-populated. With a few multinational companies dominating the great majority of the market, small-to-medium enterprises are forced to compete fiercely on the basis of innovation, quality and price. The argument for removing restrictions denies the existence of this competitive environment.

4 Some specific issues

What relationships between parties in the sector bear upon the efficacy of the parallel import restrictions? For example, to what extent is it important for Australian authors to have access to an Australian publisher in order to develop and promote their works? To what extent is access to an Australian publisher more important for a debut author than one with a track record?

4.1. A significant number of Era's authors and illustrators were either first published by Era or have the great majority of their published works originated with Era. Many of our authors and illustrators have gone on to be published by our largest competitors, but we have no author who was first published by an overseas publisher. The vast majority of authors do not have the contacts or resources to find overseas publishers. They even have trouble finding large Australian publishers due to the competitive nature of the industry and the preference for most publishers for working with 'proven' authors with a track record. It is very often the small-to-medium publishers who scout for such authors and give them their first opportunity.

How well developed is the trade in rights to literary works both in Australian and overseas markets? How important is this trade to Australian authors and publishers?

4.2. Overseas trade in rights to our works is a significant proportion of Era's revenue. Without it, Era would have failed as a business many times during its 37 years.

The royalties paid to authors as a result of our overseas trade is a significant part of their revenue. Without it, most of our authors would find the returns for their effort unviable financially.

High level objectives

Is the provision of 'an incentive to appropriate forms of investment in creative endeavour' the high level objective of the Copyright Act? What, if any, other objectives are relevant when considering the merits of the parallel import restrictions?

4.3. The existence of the Copyright Act enables the growth of a competitive industry based in intellectual property. The paper "Making the Intangible Tangible: The Economic Contribution of Australia's Copyright Industries" prepared by PriceWaterhouseCoopers provides a quantification of the industries arising from the existence of the Copyright Act.

Parallel importation would undermine Australian publishers and authors in their established global practices resulting from the Act – in particular, the contractual

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arrangements overseas regarding Territorial Copyright. Without these rights, many Australian educational publishers, Era included, would find the costs of developing large series of works too risky. The creative effort is a costly, sophisticated process and cannot be denied or ignored. Territorial Copyright is not an ‘incentive for investment and creative endeavour’, it is a fundamental precept used to calculate the balance of risk to reward in the publishing process. If the rest of the world can operate with this understanding, Australian publishers would be comparatively disadvantaged without it. The value of the copyright industries is too important to expose to this risk.

Cultural issues

What is the precise nature of the cultural benefits arising from books? 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?

4.4 Australian primary educational publishers produce materials that are studied and remembered by millions of children worldwide. The imagery and information contained in these works give children a view of the world which they carry with them for life.

Up until the mid 1960s, Australian primary school children used reading materials sourced mainly from the UK or the USA – a perspective that failed to recognize (except in token, clichéd ways from another worldview) the culture and environment of Australian children.

From the 1970s, Australian and New Zealand educational publishers, populated by successful ex-teachers, began to research and innovate on teaching methods and gradually captured significant world markets. Era won an export award for “exporting English to the English” with Tony Blair’s National Literacy Strategy in the late 1990s. Australian and New Zealand teachers were selected as consultants by the UK Literacy Strategy team to assist UK teachers. Australia had achieved a recognition for excellence in a sophisticated industry.

It is no coincidence that the Australia wine industry also achieved recognition for excellence as a producer and exporter during the same period. Like the Olympic Games, the educational publishing industry offers cultural benefits within Australia in the form of self-confidence through achievement, but it also has the benefit of establishing markers of excellence in the minds of consumers in other countries – recognition of Australians as a capable and culturally sophisticated people.

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How much greater (if at all) are the cultural benefits attaching to Australian works compared to foreign works? What is the source of these differences? For example, do any such additional benefits arise from all books by Australian authors — including those dealing with non-Australian events or themes, but which are expressed in the Australian idiom or told through Australian eyes? Or do these additional cultural benefits arise only or primarily from those books with specifically Australian themes?

4.5. In 1996, Era published the title “Pilawuk: When I Was Young”, an oral historical recount of one of Australia’s indigenous stolen children, written for primary school children. This was a risky topic at the time and was published as an honest account. It was the first of its type. The book was given an honour award by the Children’s Book Council of Australia. Era managed to sell this title to some overseas markets.

Twelve years later, the book was referred to positively in an ABC review of Kevin Rudd’s ‘Sorry Day’ speech in parliament.

No overseas publisher was likely to ever understand the cultural background or benefits of creating such a book. No large Australian publisher created such a book. Instead of being culturally ‘before its time’, the book became part of the times.

This is anecdotal, of course, but it is far from being the only book Era has created involving indigenous characters. Australia needs publishers who have an operating environment within which they can have the confidence to take risks at a cultural level and not a purely economic level. We did not have ‘Pilawuk’ boomerang back into the Australian market from any of the overseas buyers and undermine the indigenous author’s royalties, as it might have under the proposed changes to the current law.

Are the cultural benefits of Australian works reflected in Australian consumers’ purchases of books? For example, what conclusions should be drawn from the 2001 Books Alive survey that found that only 10 per cent of Australians purchased a book on the basis that it was by an Australian author?

4.6 Without some proper analysis of the statistics quoted anecdotally about the 2001 Books Alive survey, I would assume no conclusion about its relevance to the argument for parallel importation of books. Was this a trend repeated in other surveys? What were the titles on offer – might they have skewed the survey result by the choices offered in that particular year?

As an educational publisher, Era always announces its ‘Australian Family’ ownership. The organisation Family Business Australia has research to prove that Australians do show significant loyalty and trust towards Australian businesses. These claims are also made by entities such as ‘SA Great’, ‘Made in Australia’, etc.

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Does or could (additional) government arts funding achieve similar outcomes, or serve as an alternative, to the current parallel import restrictions?

4.6 While I can understand the need for some funding of the arts and particular forms of publishing, eg, poetry, as an educational publisher I prefer to maintain my independence from government funding wherever it might influence *what* I publish. My publishing choices need to be based on sound commercial principles. But I don't need those commercial principles to be undermined by the creation of an environment that would be more uneven than it already is in an overpopulated and overproduced industry.

Gauging the effects of the parallel importation restrictions

What statistical or other evidence is there to suggest that availability is or is not a problem in Australia today? For example, what use is made of the 7/90 day rule? How easy is it to use?

4.7 My books are always published first in Australia, so the 7/90 days rule does not apply to Era. Furthermore, we are well-practised at having all titles in stock – which we would do without the 7/90 day rule because it makes commercial sense to have books in stock, especially when they are part of a series.

Future market developments affecting the benefits and costs of Australia's parallel import restrictions

How is the size, structure and viability of the book industry likely to change over the next decade or two, assuming that the parallel import restrictions were retained? What factors would be most influential in these respects?

4.8 With parallel importation restrictions retained, Era would seek to continue its growth in output and its export activity. If it is not retained, we would review our export activity and the types and quantity of books we produced.

What is the likely future impact of technological developments such as ebooks and online purchasing on people's reading habits and book buying activities?

4.9 Era is involved in digital developments and the online delivery of books to schools and homes. However, the future impact of such developments is unpredictable except that it will continue to grow. The business models that arise are still being invented. One serious problem for the development of business models in Australia will be the existence of any uncertainty about the Copyright conditions under which we operate in Australia and our ability to sustain the large risk attached to experimenting and developing in this area.

The digital revolution is making intellectual property more easily transmitted than ever before, but the research and development of it has become more costly and risky than before. Era is investing considerable resources and expertise in the digital arena of

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educational publishing because we understand the importance of Australian content maintaining a strong position in schools – both at home and abroad.

Australia's current position in the global education market was hard-won after generations of deference to content from other cultures and influences to the exclusion of our own. However, the proposed changes to the Copyright Law may have ramifications for the transmission of intellectual property in other than print media. Unless publishers can have a realistic basis for undertaking the huge risk in research and development in this area, we are in danger of losing the gains made over the last 40 years. We may be making it possible for other markets to source content without undergoing its development costs, and then sell that content back into Australia against the very publishers who committed the expertise and carried the cost and risk to make that content available.

To what extent might such developments strengthen or weaken any protections to local publishing and printing provided by parallel import restrictions?

4.10 Obviously the potential for copying and distributing any digital offering complete with its original production values is greater than the copying and distribution of print books (although even that could be tested with print on demand). So if Australian publishers are to be encouraged to join this global direction, they will need at least the same copyright protections afforded their overseas competitors.

How might the business models of different book industry participants change were the parallel import restrictions to be removed. For example:

• Would local booksellers or buying groups source more books from UK or US wholesalers? To what extent would they seek to import more (heavily discounted) remaindered titles from those markets, or English-language editions of books sold in (lower priced) markets such as in Asia? What factors would influence these decisions?

4.11 Era has already experienced attempts from two overseas distributors to dumped remaindered copies of our books on our domestic market. These conditions invariably occurred when there was a change in ownership of the overseas distributor or key staff. It also occurs when the overseas distributor/publisher decides to change direction and wants a simple, profitable method of doing this. Given that a change in business direction means they are unlikely to continue the business relationship with the original Australian supplier, they feel no need to comply with previous contractual arrangements.

• What impact would these changes have on book wholesaling, distribution and retailing in Australia? What impact would they have on decisions to print books in Australia?

4.12 In my experience, small educational booksellers are unlikely to involve themselves in importing remainders of dumped stock from overseas. The quantities per title would

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not be viable for them. It is the larger national wholesalers who, in our experience, have the resources, the knowledge and the motivation to undertake such imports to increase their margins and profits without necessarily passing on savings to the consumer.

4.13 One of the by-products of parallel importation would, of course, be a huge benefit to shipping companies. Era would ship books overseas to its clients at a cost, and those clients would then ship the books back into Australia. The boomerang syndrome thereby would increase significantly the carbon footprint of the books being purchased by schools. Perhaps the cost of this footprint is greater than any claimed saving?

• What sorts of actions, including changes to contracting arrangements and different publishing strategies, could any or all of these groups take to mitigate any adverse impacts from removing parallel import restrictions?

4.14 If the Australian law allows overseas operators to sell Australian produced goods back into Australia, an Australian publisher would have great difficulty in forming any contractual protection against it. The Law of a country may over-ride any contractual arrangement between publishers and their overseas distributors. The best protection for us as a publisher would be to restrict the way we work overseas. But this would have an equally disadvantageous result for the publisher and Australia of limiting export revenue.

Could direct subsidies or other potential assistance mechanisms provide similar benefits to Australian authors/publishers as the parallel import restrictions? Are there other potential mechanisms for assisting Australian authors and publishers that would be more cost-effective from the community's point of view than parallel import restrictions?

4.15 Direct government subsidies would force publishers to have to adhere to sets of government rules. In my experience, government funding invariably has conditions and a serious cost attached to it in one form or another, and is invariably counter commercial. I would prefer to operate in a commercial sense – as do our global competitors and colleagues. We exist in a commercial environment. Why should a government policy enacted in law result in our industry becoming less commercial?

The market is already competitive to the extent that would-be publishers often have a short life-span or eke out an existence over a longer term if they are at the smaller end of town. This competitive atmosphere forces us to think outside our shores, become world class in our niche in order to survive or grow, and generates export revenue for Australia. Era's export activity grew out of a national government promotional campaign exhorting businesses to 'Export Now'. One of the prime arguments presented then by government for export was that it reduced a company's risks when being dependent on a small domestic economy.

The primary education market in Australia, due to the way the school purchasing and supply system works school by school, is expensive to market to and to service. We

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already have schools comparing prices among competing publishers and products and competing suppliers and holding powerful negotiating positions for purchasing. Why complicate an industry further when there are already enough hurdles creating a price sensitivity in the market?

SUMMARY

Parallel importation would have a varied effect on different sectors of the publishing industry. After decades of experience in both domestic and export markets, Era can confidently state that it would have a significantly damaging effect on the primary educational publishing sector in particular and the ability of that sector to confidently pursue export activity on behalf of authors and the country's economic interests.

The current system is already competitive, forcing educational publishers to be exacting in their pricing policies and demanding a publisher's preparedness to conduct business in an industry sector that offers many industry members marginal returns on investment.

The content Australian children are given in their most impressionable years of education and development needs to be relevant to their cultural environment and experiences. All children undertake literacy learning as a fundamental skill for having access to any other kind of learning for life. History has shown that content has less direct relevance to the Australian educational environment if schools are dependent on intellectual property sourced from overseas.

The publishing industry is characterized by wastage in the form of 'sale or return' policies keeping freight companies busy and over-production resulting in remaindering and pulping of books. The wastage of having books shipped overseas only to be shipped back into Australia defies logic and is certainly counter to the concerns of environmentalists. Australia needs to reduce its carbon footprint, not enlarge it.

We need a vibrant local publishing industry that can use local expertise and cultural understanding to create content that overseas publishers cannot and will not produce for a comparatively small market such as Australia. A diminished domestic publishing industry will simply once again make our market become an extension of larger overseas markets and their cultural focuses. To address such a concern with the use of government grants and subsidies is counter commercial in the educational publishing sphere and does not promote best business practices or the pursuit of excellence subject to the needs and demands of the consumers – schools.