



Australian Society of **Authors**

January 14, 2008

Mike Woods & Louise Sylvan
Commissioners,
Parallel Importation of Books Study
Productivity Commission
GPO BOX 1428
CANBERRA CITY ACT 2601
By Email: books@pc.gov.au

Dear Commissioners,

Re: Study into the rules concerning the parallel importation of books

The Australian Society of Authors directly represents about 3,000 members across Australia who write and illustrate in all genres and we speak on behalf of the more than 10,000 authors and illustrators (according to Public Lending Right Committee estimates) working in Australia today.

The ASA strongly opposes any changes to the current provisions within the *Copyright Act* (1968) as amended that would effectively dissolve Australia as a separate rights market for books. We do so for two main reasons:

1. We believe such changes would lead to a reduction in royalty income for Australian authors and a likely reduction in the level of Australian publishing (especially by Australian-owned companies);
2. The premise for the changes, that Australian book prices are higher than in overseas markets and that Australian book-buyers suffer through slow or a lack of availability of foreign books, is factually flawed.

The ASA believes the current provisions of the *Copyright Act* (1968) as amended provide the most appropriate balance for creators and consumers and should be maintained.

The Tyranny of English

Under our current law, *all* books published outside Australia must be made available in Australia within 30 days of their publication, or the rights-holder loses their exclusive licence to publish the book in Australia. Once the book has been supplied first, the book must be available within 90 days.

The terms of reference for the Productivity Commission inquiry ask whether the current situation “potentially results in higher prices and less availability of books to the disadvantage of Australian consumers” and states that “there are a range of views about whether the provisions result in significantly higher prices for Australian consumers compared to other markets”. Underlying these statements is the assumption that there is a single, global market for books and the same factors apply in *all* countries. This is fundamentally wrong.

For the purely linguistic reason that Australia’s first language is English, while the current restrictions on parallel importation apply to all books published internationally, in practice they apply mainly to books published in English. The current rules were introduced in 1991 to overcome the post-colonial problem whereby United Kingdom (UK) and United States of America (USA) publishers divided the English-language book market between them. Australian rights were often assigned with UK rights, and this meant that many USA books did not become available in Australia until the UK publishers produced their edition, for which they also usually held Commonwealth rights. Still, both the UK and the USA are essentially closed markets in much the same way as is Australia. It would be rare for a UK edition to sell in the USA and vice versa – this is one reason why online bookseller Amazon has a specific UK site.

Australia’s English language situation is unique. Similar and larger sized markets such as Sweden, Norway, Romania, Korea, Japan, Germany and France have the protection of their own languages to maintain their national literatures. Even so, Sweden and Norway, like Australia, felt the need to introduce Lending Rights to help support their national writers, but Lending Rights are only one source of income for authors, and they cannot exist if the authors’ books are not published in the first place.

Australian market more competitive

Paradoxically, despite being many times smaller, the Australian book market is now far more competitive than the US market because Australian books have to compete with those from the US and the UK, as well as those from other English language markets. Thanks to the 30-day rule, Australian book-buyers now have a surfeit of choices. Not only can they buy online from Amazon (either the US or UK websites, which offer different editions of books at different prices – without the GST, a fact which rightly enrages local booksellers), but they also have almost immediate availability of UK and US books in Australian bookstores as well as books written by and for Australians.

The 30-day rule has been of benefit both to consumers and publishers. Since 1991, the Australian book publishing industry has developed to be worth over A\$1.5 billion (ABS figures). It is now Australia's most successful creative industry. Australian-produced books make up over 60% of those sold in Australia (ABS figures). The industry has also been very successful in exporting the works of our literary creators, so much so that Shaun Tan, J.M. Coetzee, Sean Williams, Garth Nix, Nick Earls, Mem Fox, Julie Vivas, Margaret Wild, Peter Carey, Tom Keneally, Markus Zusak, Geraldine Brooks, James Bradley and many others are best-sellers overseas. But they are best-sellers in editions *licensed* to those overseas marketplaces. For example, James Bradley is published by Pan Macmillan in Australia, but by Faber in the United Kingdom. These licensed editions bring our literary creators welcome additional income. They also promote Australia's unique literary culture to the world – something other countries, but not Australia, spend taxpayers' money to promote, as with Germany's Goethe Institute and the British Council.

Disincentive to local publishing

Overseas editions of Australian-authored books go through a sales cycle that differs from the Australian edition. They may be remaindered in overseas markets while the Australian edition still sells. Without territorial copyright protection, remaindered copies would be imported into Australia. Authors receive a zero royalty on remaindered books. Furthermore, on non-remaindered

editions, overseas publishers calculate so-called 'export royalties' at a much lower rate than on domestic sales, so that Australian authors could see competing editions of their titles selling here, knowing that these overseas editions were earning them a substantially lower or zero royalty, as well as completely undermining sales of their Australian-originated edition. Without copyright protection, Australian booksellers could also negotiate bulk, discounted sales at low royalty rates, or buy from cheaper English-language markets such as India, further disadvantaging Australian authors.

The disincentive that this presents to Australian publishers is immense. Why would they promote an author and seek overseas rights' sales when this increases the probability that overseas publishers will undermine the Australian market? On the other hand if Australian publishers lessened their efforts at overseas rights sales, then Australian authors would be further isolated and disempowered and the harm to Australian culture would far outweigh any benefits.

Contracts and Copyright protection

Many authors have different publishers in different markets. For example, Garth Nix is published by Pan Macmillan in Australia, HarperCollins in the USA and HarperCollins in the UK in three different editions. Markus Zusak is published by Picador/Pan Macmillan in Australia, Knopf in the United States and Black Swan in the United Kingdom. This rights' transaction system is protected through contracts between authors and publishers, so the ASA was puzzled that the issues paper released by the Productivity Commission argued these contracts could exist and protect books being imported into Australia when changes to the *Copyright Act* to allow open entry into Australia would make such contracts null and void. The current provisions *enforce* such contractual protection and provide a good balance between the rights of creators and the desires of consumers. This balance has been a commendable feature of our copyright system and we urge its maintenance.

The ASA developed in 1963 as a reaction to Australian authors' dissatisfaction with UK contracts that treated Australian rights as subsidiary and lower in value

to UK rights – when most books were imported into Australia from the UK, sales here were paid at a “colonial” rate, *half* that of sales in the UK. The ASA has fought for 45 years to ensure that Australian authors can receive equal royalty payments in their own national territory. This has been central to the development of the Australian publishing industry as a strong creative industry.

The ASA believes that is essential for authors to be able to continue to trade their rights in different markets. Trading of rights is the commercial basis for life as an author. These rights are the saleable, income-producing parts of the bundle of rights that make up an author’s copyright. Authors can sell Australian publishing rights, rights for translation into languages other than English or rights to an American edition. This is intrinsic to the continued livelihood of authors.

The price of books: The furphy that foreign books are cheaper

The proponents of an open market argue that books would become cheaper for consumers and that 90 days is still too long to wait for a book from the Australian copyright owner. Both these points are arguable but, again, they only consider English language markets. For example, the price of Markus Zusak’s *The Book Thief* in the German paperback edition is equivalent to A\$39.50, almost double the price of the Australian edition. While the Indian paperback edition of Bryce Courtenay’s *Jessica* sells for A\$18.50, cheaper than the Australian edition, it should be remembered that the Gross Domestic Product per capita in India is US\$2,600 while in Australia it is US\$37,300, thus making books vastly cheaper to Australians in terms of purchasing power.

The present enquiry also carries a presupposition that Australian book-buyers find it difficult to purchase the books they want in Australia and that the books available are too expensive. This view was falsely presented by former NSW Premier Bob Carr, now a director of Dymocks, in the *Australian Review* of December 13-14 2008 where discounted prices overseas were compared with recommended prices in Australia. Many booksellers, including Dymocks, offer books at less than the Recommended Retail Price. Others, such as Borders and Angus & Robertson, mark up above the Recommended Retail Price. But these

commercial decisions have nothing to do with the current parallel importation restrictions.

No consumer revolt on book prices

As the peak body representing Australia's literary creators, the ASA remains unaware of any consumer "revolt" regarding the pricing and lack of availability of books in Australia. Naturally, everyone, Bob Carr included, would like consumer items to be cheaper.

But, apart from Carr, where are all the consumers protesting that books in Australia are too expensive? The only letters to newspaper editors claiming books are too expensive emanate from Don Grover, Managing Director of Dymocks. Any changes to the current parallel importation provisions would punish an economically successful industry for little benefit to anyone but *some* bookshop proprietors. As it is, many independent booksellers favour the current situation, with perhaps some revision of the 90-day rule.

The ASA attends all writers' festivals around Australia and the crowds in the bookshops there don't seem to be concerned about the price of books. In fact, the sales of books for 2007-08 increased – hardly an indication that books were too expensive or unavailable. Nielsen Bookscan, measuring book sales at point of purchase, recorded that trade book sales increased to 63 million in that period. The value of these books sales was A\$1.25 billion. Five of the top 10 best-selling books in that period were Australian titles, a cultural impact unmatched by any other creative industry except perhaps television. (Television of course is a highly protected creative industry, with strict controls over broadcasting licences.)

Self-sustaining creative industry

In stark contrast to books, only one Australian movie, *Happy Feet*, made it into the Top 50 Box Office list in the same period. Yet the Australian Government offers the film industry a 40% taxation incentive. Of the \$120 million reputed budget for Baz Luhrman's *Australia*, \$48 million was contributed by the Australian taxpayer. The Australian Government provides almost no support for the Australian publishing industry. Its total contribution to the literature sector is

\$27 million a year, which includes some \$17 million in Lending Rights payments (ASA paper). The publishing industry is offered almost no incentive for its activities, yet it currently provides significant income to the Government from the Goods and Services Tax (GST), payroll tax, and from taxes on earnings.

Table 1 shows the ABS figures of royalties that publishers paid in Australia in the years when the ABS collected information on the publishing industry. As taxable income, this money has an impact on revenue collection by the Australian Taxation Office.

Table 1: *Royalties paid by Australian publishers*

1999-00	\$79.1 million
2000-01	\$83.2 million
2001-02	\$89.7 million
2002-03	\$100.1 million
2003-04	\$87.9 million

Books sales differ in different markets. While there are trends, each marketplace has its own unique features. Even within the English-language book markets there are considerable differences, as shown in Table 2 where the best selling books in five English language markets for November 2008 are listed.

In terms of books sales, Australia and New Zealand both demonstrate considerable diversity, with both British and American titles mixing with local titles. What is apparent, though, is that few titles from the post-colonial countries (Canada, New Zealand and Australia) feature in each other's list or in the lists of the major markets, the US and Britain. This again represents the tyranny of English.

Only American titles feature in the US list. The UK list is slightly less parochial but only through the inclusion of a book based on a US movie, *High School Musical* as well as a book by American author James Patterson.

Books are *most expensive* in the open market territory New Zealand.

Table 2: Best selling books for five English-language markets, November 2008

Australian best-sellers 8-11-08 (AB&P)	UK best sellers 15-11-08 (The Bookseller)	US best sellers 16-11-08 (USA Today)	New Zealand best sellers November 08 (Nielsen Bookscan)	Canadian best sellers 15-11-08 (Canadian Booksellers Ass.)
<i>Cross Country</i> James Patterson	<i>Guinness World Records</i>	<i>Twilight</i> Stephanie Meyer	<i>Brisingsr</i> Christopher Paolini	<i>New Moon</i> Stephanie Meyer
<i>The Islands</i> Di Morrissey (AUS)	<i>Fatty</i> Dawn French	<i>New Moon</i> Stephanie Meyer	<i>Devil Bones</i> Kathy Reichs	<i>The Shack</i> William P. Young
<i>True Colours</i> Adam Gilchrist (AUS)	<i>At my mother's knee</i> Paul O'Grady	<i>Eclipse</i> Stephanie Meyer	<i>Can We Help it if We Are Fabulous?</i> Peta Mathias (NZ)	<i>Twilight</i> Stephanie Meyer
<i>Twilight</i> Stephanie Meyer	<i>Jamie's Ministry of Food</i> Jamie Oliver	<i>Breaking Dawn</i> Stephanie Meyer	<i>Guinness World Records 2009</i>	<i>Eclipse</i> Stephanie Meyer
<i>Guinness World Records 2009</i>	<i>Parky</i> Michael Parkinson	<i>The shack</i> William P. Young	<i>The six pack three</i> (NZ)	<i>Breaking Dawn</i> Stephanie Meyer
<i>Parky</i> Michael Parkinson	<i>The Appeal</i> John Grisham	<i>The Christmas Sweater</i> Glenn Beck	<i>The Guernsey Literary and Potato Peel Pie society</i> , Mary Ann Shaffer	<i>Payback</i> Margaret Atwood (CAN)
<i>4 Ingredients 2</i> (AUS)	<i>High School Musical: The annual</i>	<i>The audacity of Hope</i> Barack Obama	<i>Ladies a plate</i> Alexa Johnson (NZ)	<i>Through Black Spruce</i> Joseph Boyden (CAN)
<i>New Moon</i> Stephanie Meyer	<i>That's another story</i> Julie Walters	<i>Too fat to fish</i> Artie Lange	<i>The age of the warrior</i> Robert Fisk	<i>Three Cups of Tea</i> Mortenson / Relin
<i>The Private Patient</i> P.D. James	<i>For crying out loud</i> , Jeremy Clarkson	<i>Just after sunset</i> Stephen King	<i>Breaking Dawn</i> Stephanie Meyer	<i>Twilight</i> Stephanie Meyer
<i>Eclipse</i> Stephanie Meyer	<i>You've been Warned</i> Patterson and Roughnan	<i>Dreams from my Father</i> Barack Obama	<i>When Will There be Good News?</i> Kate Atkinson	<i>World Without End</i> Ken Follett

AUS = Australian title; CAN = Canadian title; NZ = New Zealand title

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(Canada, New Zealand and Australia) feature in each other's list or in the lists of the major markets, the US and Britain.

For a variety of reasons, the price of books is also relative from one country to another, as Table 3 shows, also showing a discounted price (Dymocks) available to Australian book-buyers.

Table 3
Price and availability of selected books in five English-language markets Nov. 2008

Book	Australian RRP	Discounted ARRP	US List	UK List	NZ List	Canadian List
<i>Private Patient</i> P.D. James	\$32.95 C format	\$22.95	US\$25.95 (A\$40.53)	18.99 (\$44.45)	NZ\$37.99 (A\$32.24)	C\$32.00 (A\$39.99)
<i>The White Tiger</i> Avarind Singh	A\$32.95 C format	\$28.95	US\$14.00 Mass market PB (A\$21.89)	7.99 mass market PB (A\$18.72)	NZ\$37.99 (A\$32.18)	C\$16.00 Mass market PB (A\$19.98)
<i>Fishing for Stars</i> Bryce Courtenay	\$49.95 hardcover	\$49.95	Not available in US yet	18.99 (A\$44.45) not available in UK yet	NZ\$54.99	Not available in Canada
<i>Change of Heart</i> Jodi Picoult	A\$32.95 C format		US\$16.00 mass market (A\$25.05)	16.99 hardback paperback unavailable (A\$39.80)		C\$29.99 hardback
<i>Parky</i> Michael Parkinson	\$49.99 hardcover	\$34.95	US\$37.95 hardcover (A\$59.48)	20.00 hardcover \$46.85	NZ\$59.99	C\$24.95 paperback. Not yet available in Canada

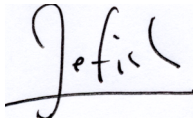
The maintenance of an exclusive Australian copyright territory is of crucial importance to Australia's future. Seen as cultural producers, Australia's authors and publishers are as important to the national interest as our primary producers. When we export our culture, we open the doors for our businesses and their products.

If the current restrictions on parallel importation were removed writing and publishing in Australia would be abandoned. Our nation would lose a strategic resource and our ability as a nation to represent ourselves as culturally unique to the rest of the world would be diminished. Fifty years of a remarkable cultural flowering in literature and publishing will be wiped away — and for no good reason.

The balance provided by the current provisions, allowing flexibility for both creators and consumers, is an equitable one and should not be tampered lightly. We reiterate our view that the current situation must be maintained.

Both the New Zealand Society of Authors and the Society of Authors UK support this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Fisher', with a horizontal line drawn underneath the name.

Dr Jeremy Fisher
Executive Director