

Parallel Importation -- bad move

a submission to the Productivity Commission

by Frank Moorhouse

Background note:

Frank Moorhouse AM, was Coombs Creative Fellow at the ANU in 2008. He researched the Copyright Agency Limited report 'State of Writing in Australia' in 2004 (copy available from the author). Moorhouse has written fourteen books. His books have been published in the UK, US, France, China and other countries. His essay *The Writer in a Time of Terror* published in the Griffith Review won the Walkley Award and the Alfred Deakin Award for best essay contributing to public debate.

Copyright is not just a commercial boundary -- it is the boundary of a distinctive part of the human condition, closely related to nationhood, to culture-hood.

It is a historical and cultural border within which many forms of creativity gain protection especially the distinctive human activity called the arts.

It is a legal recognition of being creatively human: both about the universal preoccupations of the species and about the localized and particular preoccupations of cultural groups within the universal.

When I studied the Productivity Commission invitation for submissions it seems to ask us to consider a simple objective – change the copyright act to allow for the possible, unproven economic advantage of having overseas published books here slightly faster.

The Commission calls for statistical evidence of the impact of this on local publishing and through that on Australian culture.

The Commission rightly points out that comparative, ‘robust’ ‘meaningful’ and ‘systematic’, evidence in this debate is unavailable.

There is no such statistical evidence and there is unlikely to be any.

We know that whatever general statistics exist about the publishing and importing of books these statistics contain within their numbers what might be called serious books – literary arts, intellectual work, history, and so on.

At present these titles are inextricably mixed with all others in our statistical knowledge and are likely to remain so hidden because of the complexities of definition and identification.

This is partly the reason why some things which the Commission would like to know are immeasurable by any known technique.

I think that we have to accept that ideas such as the ‘nurturing’ or ‘damage’ to the literary arts -- our writing and publishing and book selling—do not belong in an evidential, economic argument.

These words carry the argument very quickly out of statistics to a postulative argument, resting on centuries old cultural assumptions which because of the difficulties of proof are instinctively deemed by liberal democracies to be axiomatic.

Let's be wise enough and cautious enough not put our immeasurable literary values at risk in any way simply to gain some measurable financial result for some parts of the industry or for some consumers.

At this point in history, until some data tells us otherwise (which we know is unlikely given the nature of things) let us assume that anything which weakens our copyright boundaries weakens our culture.

From my own experience and anecdotally and impressionistically, there seems to be no problem about the availability of overseas published books.

If those overseas-authored books which are published locally are slightly more expensive than the imports (we don't know) I think it could be considered as a 'tax' worth paying for the existence of a professional publishing industry in Australia which is in part, supported by the republication of these overseas titles in Australian editions.

My hunch is that a significant percentage of readers would agree.

Copyright is the basis of the writers' income. It legally manages not only royalties from book sales but all other transactions in a writer's life.

At present some Australian authors publish their work in three or four copyright zones – Australia, British Commonwealth, and North America (sometimes broken down into US and Canada) and 'rest of world' (including say EU and Asia – sometimes these are sold separately).

Some find that at points in their career they are able to negotiate in other copyright zones; some do not, remaining always connected to only an Australian readership.

Literary authors generally begin and some continue throughout their writing lives by having most of their readers in the Australian copyright zone because the stories they are telling connect with this culture.

The income of an Australia literary writer is packaged from patronage both private (usually a spouse) and public, Public Lending Right, and the copyright act which yields royalties and other payments collected by the Copyright Agency Limited.

The serious risk is that proposed amendments to the Copyright Act will allow the more powerful UK and

US publishers to wreck those Australian publishers (including those who shape the local affiliates of overseas publishers) who carry out their traditional role of developing new Australian talent and sustaining those writers who depend almost entirely on domestic readership.

Established writers with Australian and overseas contracts -- will simply be induced and pressured by the head offices of the overseas publishers (endorsed by the proposed changes) to sacrifice Australian copyright boundaries and allow the overseas publishers to export our overseas-published titles to Australia instead of us first publishing with Australian-based companies (as most of us do now).

Overseas publishers will eventually breakdown the Australian copyright zone.

The likelihood is that this, in turn, will drive the local publishers out of business (at least for the literary arts) because they know that their mature authors with overseas appeal will be lured away and that new Australian writers with only local appeal will have no nurturing, commercial base.

At present, Australia as a nation is doing remarkably well in the eyes of the world—not just in

sports—but in technological innovation—in medical research—we are held up in the world as an example of good governance— and, of course, we are admired for our arts.

As American Richard Florida argues in his book, *The Cultural Class*, these seemingly diverse successes are a result of interaction among this diversity in subtle ways through the hidden stimulation of one part of the culture with the other, essentially through our arts.

It is useful to remember that, legally and socially, books have a double nature.

In all countries they are recognised both as commodities in commercial sense and are seen as *social property* -- it is this character as social property which marks them off say from refrigerators and tvs and cars.

An illustration of this special nature of books is that seventy years after the death of the author the work enters the public domain and is out of copyright. They become the property of us all.

And most dramatically, in our society, the work is made available to the community free of charge through the free-library system.

No other product is treated this way in our society.

They are given this special standing as social property —as property held in common and secured by copyright -- because they are considered to be the building blocks, to a significant degree, of the other arts of our civilised life. ENDS