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## NEWSTEAD

## P u b l i s h e r s

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## Copyright 2009

A submission from

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First, I must say where I am coming from. In 1958 I started the Melbourne educational book department of the London publisher William Heinemann Ltd, and became its first Managing Director when it was incorporated in 1964 as Heinemann Educational Australia P/L. In 1980 we took over the sibling trade firm, William Heinemann Australia P/L, and I became Managing Director of the combined company, Heinemann Publishers Australia.

I parted company with them in 1985, and since then have run my own trade book company, Hudson Publishing.

I have therefore had considerable experience both of import operations and of domestic publishing and export.

My concern is to not to ensure any particular outcome but to ensure that the debate itself is properly informed. On the previous occasion, the outcome of the debate was legislation whose effect bore little relationship either to the aims and expectations of its promoters or the fears of its opponents.

### 1. Territorial copyright and exports

My concern about earlier moves to erode Australian territorial copyright were simple: I feared that other countries might retaliate by passing similar legislation, making it virtually impossible for our books to reach their markets. It didn't happen, and maybe there was never a real risk that it would, but it

raises issues which are fundamental yet not widely understood, so it may be helpful to explain them.

It was constantly asserted by the reformers that copyright inhibited the flow of books. This seemed so self-evident that I do not believe any contrary argument was heard at all.

When we publish a book, we have world rights and the book is available to anyone in the world who wants to buy it. However, nobody wants to buy a book of which they have never heard, so it is essential to have promotion in every target market. We can offer the title on our Website and may get a few private orders, but trade orders are rare, if only because the UK and US book trades are very parochial, most bookshops buying only from local distributors and publishers.

If one of our books is to compete in the international market, therefore, we have to sell exclusive distribution or publishing rights to firms in the target markets. They have to be exclusive because nobody is prepared to invest in a promotional campaign without the assurance that they will be able to reap the benefits of it if the promotion is successful.

These rights are the stock-in-trade of the Frankfurt Book Fair. Despite its name, it is all about trading in exclusive territorial rights, not books.

The Fair is dominated by UK and US firms, who are there for the same reason: they cannot sell in one another's markets without effective promotion, and apart from a handful of very large firms, which have full scale operations in both markets, they too are dependent on rights sales if their books are to realise their potential.

If an illustration of this is needed, here is one. I published a book called *The Last Mutiny*, about William Bligh, and sold world rights excluding Australia and New Zealand to the London office of the US firm Little Brown, assuming that they would give their own US people the US market. To my surprise, they said that their US people were not good at selling books about sailing square riggers, and they subleased the US rights to the square-rigger experts, W.W. Norton.

In short, territorial rights, so far from being a barrier to trade, are the oil in the mechanism of international publishing. If the UK government had retaliated against the Australian law by extinguishing UK territorial copyright in books originating in Australia, our export business there would have been finished. We would have had nothing to sell.

Happily, no such retaliatory action was taken there or anywhere. Australia remains to the best of my knowledge the only country in the world which does not give full recognition to territorial copyright.

Culture is not like a disease, something which travels unless it is obstructed; it is more like the human voice, which does not carry very effectively unless it is assisted.

## 2. Territorial copyright and imports.

### 2.1 The Australian Book Trade – an indent culture

‘Indent’ is (or at least was) trade jargon for an order placed with an offshore publisher. By ‘indent culture’ I mean one in which buying from overseas is a normal part of the practice of the retail trade.

The UK retail book trade is not and has never been an indent culture. They have always filled their shelves almost entirely from the offerings of local publishers and distributors. Go into an British bookshop and try to order an Australian book. If the title is not stocked by a UK publisher or distributor, they will tell you it is unavailable.

The US retail book trade started as a colonial indent culture, but by the start of the 20th century had become self-sufficient. Today, the idea of buying stock direct from an Australian publisher would be as outlandish there as it is in the UK. They rarely if ever place an order with a British publisher, still less an Australian one. Incidentally, this includes Amazon.com. Until they opened as a clearing house for second-hand copies, any book of ours for which we had no US publisher or distributor was listed by them as ‘out of print or hard to get’, which was a simple lie. We have never received order from them.

By contrast, the Australian book trade is the largest in the world which retains an indent culture. Fifty years ago, this was quite spectacular. Almost every bookshop, even quite modest ones, maintained accounts with a large number of overseas publishers and wholesalers. Robertson and Mullens in Melbourne had a London buying office whose sole function was to ensure that the Melbourne shop was the first with the latest, and Angus and Robertson’s huge Castlereagh Street shop was rightly identified as carrying the widest range of stock in the world, two million different titles. if my memory serves me right. They bought them from everywhere.

This is sadly no longer the case, but the decline is largely the result of the increased availability of local stock, which enables them to fill their shelves without the delay, risk and cost of import. It has nothing to do with

copyright. Almost all of those two million books (or their current equivalents) are still available to any bookshop that wishes to order them.

I say this because one of the bizarre assertions made during the earlier debate was that copyright law prohibited the entry of books into Australia unless the importer owned Australian territorial rights. This would have meant that virtually all Australian booksellers breached copyright every time they placed an indent order, which they did many times every day. The assertion was made by many people who should have known better – I remember it being made by an officer of the Crown Law department at a public meeting in Canberra – and for all I know it is still being made.

## 2.2 Closed markets.

Put at its simplest, a closed market was one in which an overseas publisher held world rights, or a package of territorial rights including Australia, but gave exclusive distribution rights in Australia to its Australian representative.

This was not seen as a transfer of Australian territorial copyright. It was seen purely as a marketing strategy. I am not aware of any instance in which an Australian closed market arrangement was defended by appeal to a court. If we found that a closed market book had been supplied on indent, we would simply complain to the overseas publisher who had supplied it, in breach of an understanding that Australian orders would be referred back to us.

What was the point of closed markets? As MD of an educational publisher which was among the first to close the market on a wide range of books, I can answer this question very simply.

One of my responsibilities was to generate demand for the books, but a second was to ensure that books were available to meet any resultant demand. This was not just a commercial matter. Every year the newspapers would be full of complaints that books prescribed for the year's public examinations were not available, and prescribing boards became increasingly concerned, requiring publishers to give undertakings that copies would be available.

It sounded easy, but was not. Estimation of the total demand was relatively easy, and in the case of our Australian publications this was the end of the matter. However, with overseas titles we had to guess how many copies would be ordered on indent, to ensure that the shortfall (if any) was made good from local 'back-up' stock. In practice, this shortfall could be anything from 100% (i.e. no indent orders have been placed) to a minus figure, indents having exceeded total demand so that bookseller not only ordered none from local stock but attempted to return to us the unsold copies from their indent orders.

Our solution was to close the market. From then on, we never had any serious non-availability problems. We were unquestionably 'acting in restraint of trade', but I believe that our closed market delivered a net benefit to Australian customers.

I have been out of educational publishing for twenty five years, and do not know whether these problems still occur. However, I am aware of similar problems with trade books. Here, once again, is an anecdotal example.

An American acquaintance wrote a book which was published by an American firm. They sold UK rights including Australia to a UK publisher. When the book was published, it exceeded all expectations, becoming a best-seller in the USA. My friend suggested that a promotional campaign should be mounted in Australia. He was told that this was impossible, as they had no representation in Australia and had left Australian distribution to the UK publisher. Meanwhile the UK publishers also refused to fund a promotional campaign, on the grounds that Australian copyright had by then been extinguished, giving them no protection against imports of the US edition.

The result was that the book, an important study of an aspect of American cold war politics, was never promoted in Australia, never noticed in the Australian media, and sold only a few dozen copies.

This story is of course anecdotal, but I suspect that it is true of many books. I quote it not to suggest that it is a serious argument in favour of a more stringent copyright law, but that it illustrates a by-product of the reforms which had not, I believe, been anticipated by the reformers. The reforms led to some books by established authors being available earlier and/or cheaper to Australian readers, which is good, but these were very few, And it was certainly bad for new authors and smaller overseas publishers, since in the absence of a local promoting distributor, Australian readers never heard about them and as a result never asked for them.

It is also worth pointing out that the restrictions which the reforms sought to remove applied in all markets, including those in the UK and USA. Australia was not peculiarly disadvantaged. (This does not make the restrictions any more acceptable, but it puts the issue in context.)

In any case, the restrictions applied only to a small number of titles. They were highly visible titles, being by definition books which were sufficiently popular to warrant multiple editions. But the implication of some of the protagonists of reform – that the range of books available was seriously limited by copyright – was nonsense, based, perhaps, on the misunderstanding of copyright law I referred to above.

### 2.3 Competition in the Australian market

As an Australian publisher, I had hoped that the reforms would mean less competition for space in Australian bookshops and review media. Indent ordering was in decline, and I assumed that, without the protection of closed markets, local stockholding and promotional activities for overseas books would also decline, leaving more room for ours.

This was in direct contrast to the expectations of the promoters of reform, who said that the removal of copyright protection would result in greater competition, because shops would be free to indent any edition which was authorised in its country of origin.

In the event, we were both wrong. Indenting has declined despite the new freedoms, while local stockholdings have not collapsed despite the withdrawal of copyright protection.

I was perhaps right about competition for review space, though the increase in local publishing activity means that it is no easier to get space for any given local book than it was in the past.

However, when it comes to space in the bookshops, this is as difficult as it ever was. This is partly because of local publishing activity, but largely because of the switch from an indent culture to an essentially parochial culture. Most shop stock only those books which are available from local stock, resulting in a de facto closed market. The indent culture survives only in 'special orders' – Australian bookshops are still prepared to indent on behalf of their customers, while buying their shelf stock locally.

### 3. Territorial copyright and the Australian printing industry.

I don't think anybody expected that the reforms would affect the Australian printing industry. The thirty-day rule was seen as so stringent that it would rarely if ever be invoked. I heard Professor Fels saying that this was his view, and I agreed with him.

In the event, it is the Australian printing industry which has been the principle beneficiary. Every year large orders for the latest best-sellers are placed with Australian printers, who have as a result updated their plant and introduced efficiencies which make their prices competitive with offshore printers for a

wide variety of books, and in particular the long run mass market books which are their staple.

Meanwhile we have been collateral beneficiaries, as their prices have become more competitive even for smaller print runs, reducing the pressure to place orders offshore.

### 3. Conclusions

The most striking thing about a retrospective look at the last round of changes is that neither the hopes of their promoters nor the worst fears of their opponents have been realised.

Whether the net result has been good or bad for Australia's economic and cultural life depends largely on the importance on given to some pretty trivial adjustments. The major changes which have occurred have done so despite rather than because of the reforms.

I think there are lessons here, and could enlarge on this point if required to do so. However, for the moment I leave it to the reader to decide what the lessons are.