

**THE MARY CUNNANE AGENCY PTY LTD**  
**LITERARY SERVICES AND REPRESENTATION**

**Submission Regarding Parallel Importation**

*“If it ain’t broke, don’t fix it.”*

Anonymous

I write as a literary agent with more than three decades of experience in publishing, an industry I entered in 1976 at W. W. Norton & Company in New York, where, for over twenty years, I was, serially and sometimes co-terminally, an acquisitions editor; British rights manager (responsible for the selling of UK & Commonwealth rights in Norton’s books to English publishers); liaison with the then (1982) newly-established London-based W.W. Norton & Company Ltd (a position which I held for three years and which put me squarely in the middle of the firm’s international sales operation – including the establishment of its first distribution arrangement in Australia in the 1980s); and then vice president and senior trade editor. I left the firm in 1996, moved to Australia in 1998, and started this agency in 1999.

I think I can fairly say that – save for running a bookstore -- I’ve covered the waterfront, as it were, in terms of the issues that concern this inquiry.

In my view, parallel importation would have a deleterious effect on the vibrancy and health of the Australian publishing industry, and, perforce, Australian writers. Almost certainly, a fair number of the smaller, independent firms -- those most likely to seek out and encourage innovative, “riskier” work – will fall by the wayside, leaving the field to the larger publishers, almost all of whom are subsidiaries of internationally-based conglomerates, whose business model – the personal preferences and attitudes of their employees aside – don’t allow them, on the whole, to acquire and

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publish books (those aimed primarily at the domestic market) for readerships in Australia of fewer than 3000. It simply doesn't compute for them; the order of magnitude is out of whack. So where will those writers – the first-time writers in need of editorial nurturing; whose audiences need to be built – go?

As an agent, if I sell an Australian work to US and UK publishers under open-market conditions, almost certainly copies of the overseas editions will be stocked by bookstores here. However, the US and UK publishers will not be paying full domestic royalties (i.e. 10% of the RRP), on those sales, but rather what is known as an export royalty – 40-50% of the US or UK royalty. I might be able to bargain for a higher royalty, but where is my leverage for most authors? Why would a US publisher offer a higher royalty for Australian sales in the face of a competing UK edition? And vice versa. Will the British publisher match the US terms? And again, vice versa? Do I decide that failure to offer non-export royalties is a deal-breaker? It might work for very high-profile, best-selling writers, but it's just as likely to produce a "take-it-or-leave-it" response with regard to works by the majority of authors.

Without exclusivity, for US and UK publishers, Australia is simply an export, not a publishing market. Peter Donoghue writes in his submission that rights sales will continue regardless, implying that UK or US rights holders (whether a publisher or an agent) will license ANZ rights to Australian publishers. But why would they, how could they, in the face of an open market? What Australian publisher would buy rights to a book from a US firm or agent when they know that the UK edition could and would be available for sale here? And could they legally buy exclusive ANZ rights anyway, if parallel importation is the order of the day?

Further, licensing ANZ rights only -- for books with international potential -- to Australian publishers will be virtually impossible. They will demand world English language rights in the face of the free importation of US and UK editions. That takes income and choice away from Australian authors because it is then the Australian publisher (rather than the author) who decides how their books are licensed/sold in the US and the UK. If Random House Australia, for example, acquires world English language rights to Book X, it can simply distribute the Australian edition of the book through its respective sister companies in the US, the UK, and Canada – again, paying the author only an export royalty. Or they

could on-sell the actual publishing rights to those same companies, or indeed to other companies. But in either case, whether the UK publisher is Random House or Faber, could Australian booksellers then be legally prevented from importing those editions, rather than the local one? It's mind boggling, but you can be sure of one thing: authors' income, and authors' choice, and control, of who publishes their work overseas, and how, will suffer.

But perhaps all this mess (that's the only word I can think of) is the inevitable price to pay to protect Australian consumers ,i.e to give them the lowest possible price and the greatest possible choice of books from around the US and UK? These are the arguments of Bob Carr and his colleagues at Dymocks.

First, as was widely reported at the time, rather than reducing the RRP on books , several of the major chains actually increased them in the most-recent pre-Christmas selling season. These are the same people making the argument, ostensibly on lower-price grounds, for parallel importation.

So, will parallel-imported books actually be sold to the consumer at cheaper prices, or will the chains simply pocket the difference? And will the government therefore step in to regulate this – ensuring that if booksellers buy in overseas editions at cheaper prices they must then sell them more cheaply? “Quelle horreur!” I can hear you say. “Let the market prevail” Sure; with respect, pull the other one. As we have learned to our bitter cost over the last six months, the “let-the-market-prevail” philosophy is, in large - if not sole -- measure responsible for the global financial catastrophe which is engulfing us all, including the publishing industry.

Second, absolutely no one in Australia is prevented from buying in a US or UK book on an individual basis at any time from Amazon.com or Amazon.co.uk, or through an individual order placed with a bookseller; choice is ever present. And, within 30 days, if there is no domestic edition available, booksellers can import US and UK editions in quantity. Where is the problem?

Yes, the relative price of books in Australia is an issue, but, if the government is truly concerned then it should remove GST on

books . Not in the Commission's remit, I've been told. That, I submit, is a total cop-out. Other alternatives: a subvention to printers to reduce their per-copy price to publishers on first-printings of 5,000 copies or less; subventions to publishers; tax breaks for consumers on book purchases up to x number per year. There must be other possibilities as well.

Finally, it absolutely boggles the mind that the government, through various initiatives, has been so supportive of the publishing industry over the last decade, an industry that it has helped to make a significant mark internationally -- and now it is contemplating a course of action that could well undo all of that.

It puts me in mind of the government's schizophrenic tourism and logging policies in the part of Australia where I live, i.e. allowing the logging of old-growth forest for wood-chipping in the south-east forests of NSW in precisely the area that Tourism Australia has just designated an iconic landscape -- Australia's Coastal Wilderrness -- to encourage overseas visitors!

Respectfully submitted,

Mary Cunnane, 20 January 2009

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