



## Introduction

The Australian Booksellers Association (ABA) is the peak representative body for all booksellers. Its membership crosses all sectors with over 550 member stores including Independent, Chain, Online, Educational, Campus and Second-hand Booksellers. After extensive consultation with its members the Management Committee has resolved that the ABA position established in 2001 in support of the open market no longer reflected the needs and views of its diverse membership.

This submission reflects that view while acknowledging that there are a number of members who continue to advocate for the open market.

## Summary

The ABA does not believe there is sufficient cross-sector consensus in book retailing to support the scrapping of all copyright protections.

Therefore the ABA does not seek the abolition of copyright protections.

It does not however advocate for a continuance of the current restrictive market practices as they do not provide sufficient competitive pressure to deliver best service, speed of supply and best price for both booksellers and readers.

The ABA has determined that most members support the following reforms for both cultural and economic reasons:

- Review of the GST tax imposition on books sold domestically or via import
- Maintenance of the use-it-or-lose-it provisions of the Australian Copyright Act while introducing greater competition and downward pressure on price by further tightening the qualifications for territorial copyright through the introduction of Canadian style regulations relating to supply and price

## Explanatory detail

The ABA views the use of legislation, the Copyright Act in this instance, as an inefficient and reactionary response to changes in technology, reading formats (digital, print based etc) and markets.

The ABA considers the introduction of a set of governing regulations that have the capacity to adapt to these factors without continual recourse to legislative change to be a more efficient model.

The ABA considers the uncertainty delivered by the removal of territorial copyright to be of too great a risk to our developing independent publishing industry, particularly in light of the business models of the most successful of these publishers and their reliance on the value of territorial copyright.

The growth of the independent publishing sector since the 1991 amendments is in marked contrast to the failure or takeover of independent publishers before the amendments.

The ABA considers further modification to copyright legislation, establishing performance criteria for maintaining copyright, to be in simpatico with this development.

## Australian copyright and a regulatory approach

While the Canadian regulations provide significant price competitiveness on titles that are imported and distributed in that country, titles that qualify as a 'Canadian Edition' are still excluded from competitive pressures.

A direct translation of the Canadian approach into Australia would only see about 40% of domestic sales subject to this competitive pressure with the remaining 60% retaining exclusive rights no matter the cost or supply times.

While it can be argued that the competitive pricing on imported books provides some downward pressure on titles produced locally, the full benefits of competition are not transferred.

In light of this the ABA proposes that an Australian version of these regulations create performance criteria that treat all titles equally to derive the full benefits of competition on both New Titles and Backlist.

### Regulatory Approach Summary

The ABA sees an Australian version of the regulations adhering to the general structure of the Canadian regulations with certain differences.

1. That all titles both imported and published in Australia be treated equally.
2. That there remains the capacity for publishers and distributors to exhaust copyright if they do not adhere to the regulations
3. All rights holders must ship the book to the bookseller from their local distribution point within **7 days** of receipt of order to maintain exclusive distribution/copyright.
4. In order to maintain territorial copyright the local publisher must provide the book at a price no greater than the list price of a competing edition in its originating country, plus the exchange rate, plus an agreed percentage<sup>1</sup>, the price after conversion minus any applicable discounts

The criteria for these regulations should be established by an Industry Working Group overseen by an independent party.

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<sup>1</sup> The percentage would correspond to the average actual costs currently paid by book importers for transportation and related expenses – including shipping, handling and receiving, inventory, financial reporting, general overhead and sales and marketing

The ABA responds to the following questions raised in the Issues paper. We deal with these issues as presented referring to sections as per the issues paper for clarity.

### **3. Key Arguments Raised in other 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?***

Without engaging on the strength of the arguments we believe that the paper has adequately captured the major points.

***What other issues should the Commission consider in this study?***

We believe that the taxation system has a direct impact on the price of books and is necessarily part of any analysis of price in comparison with overseas markets.

We note that the imposition of GST on books and the way in which goods purchased by a consumer from an overseas online retailer are specifically excluded from this; however there is unanimity in our membership that we make representation on this point.

Arguments have been made that the competitive advantage given to overseas retailers by the absence of a consumption tax on their sales is offset by freight cost considerations. We strongly reject these arguments as freight costs can be offset by multiple purchases, and our nascent online book industry competes with none of these advantages.

We ask that the Productivity Commission be given scope to seek further study in this regard

***What evidence is there to support the contentions of the supporters and the critics of the current provisions?***

The ABA has no data on price comparisons with overseas titles or the capacity of other industry stakeholders to lower the price of books.

The ABA notes that the only detailed studies of the book industry with a particular focus on the ability of booksellers to cut margins to deliver cheaper books were discontinued by the ABS after the 2003-2004 study.

This study found that the average profit margin for booksellers was 1.3% with larger businesses reporting a profit margin of 0.5%

As the structure of the Book Industry has not undergone any major reform, and that the trading conditions of the subsequent 5 years have not been widely divergent from this period we submit that this figure would not have undergone any statistically significant change.

The ABA considers this to be a fundamental fact in any study that seeks to locate the point from which benefits to the consumer can flow.

## 4. Some specific issues

### The workings of the book sector

***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?***

The ABA makes no representation on this issue

***To what extent is access to an Australian publisher more important for a debut author than one with a track record?***

The ABA makes no representation on this issue

***How well developed is the trade in rights to literary works both in Australian and overseas markets?***

The ABA makes no representation on this issue

***How important is this trade to Australian authors and publishers?***

The ABA accepts the arguments made by some parties that the capacity to support their publishing of new and established authors is supported by an associated rights trading business.

***Has the structure or nature of the books industry changed in recent years in ways that bear upon the benefits and costs of parallel import restrictions? In particular, have recent technological changes — for example the availability of online purchasing, ebooks or printing-on-demand — materially changed the industry and the ways in which copyright issues should be addressed?***

As the ABA has strongly advocated in its general submission, the capacity for the current Copyright Act to adapt to change is severely limited.

It is commonly accepted within the Book Industry that developments in Print-on-Demand technology will materially affect the speed of supply and availability of a large number of backlist titles. It is also commonly accepted that with the development of digital technologies and e-books it will also be much easier and faster to supply books than the current performance criteria set in legislation. A legislative approach does not have the capacity to respond quickly to these developments.

The market penetration and consumer acceptance of online book retailing has also enabled consumers to price compare Australian retail prices with prices anywhere in the world. Under the current legislation there are no competitive mechanisms applied to the price of imported books.

If the productivity commission recommends the retention of territorial copyright, then the ABA submits that a regulatory approach containing performance criteria to maintain copyright will ensure competitive pressures on price and speed of supply.

A regulatory approach will also ensure that the performance criteria can adapt quickly to changing market conditions.

## 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?***

The ABA makes no representation on these issues

## Cultural Issues

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

The ABA submits that quantifying culture in terms of economic value is a reductionist approach that fails to understand the intrinsic nature of culture. We strongly support government funding for all arts sectors and believe the criteria for achieving that support should be aligned with more than just an economic imperative.

***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?***

That there is a cultural benefit in the production of artistic work is undeniable. That the contribution to national cultural identity by Australian writers is necessary follows the same argument that sees government and community support for Australian sportsmen and women, Australian Films, Australian business. Arguments over territorial copyright, importation and consumer pricing should not include a questioning of the cultural contribution of the creators holding that copyright.

The ABA does not support any change to legislation that has a demonstrable diminution of cultural production by Australian writers.

The arguments relating to parallel importation, retention of copyright and potential benefits to the consumer relate to global markets and the control of those markets by an oligopoly made up of a number of multi-national publishers. While these companies are engaged in some level of support for Australian cultural production the core business of these businesses is predominately the production of books for profit. Cultural support for Australian writers while significant is of a secondary order. The ABA accepts the need for there to be structures in place within the book industry to ensure the consumer is not exploited by the control of our market by these companies.

It is the contention of the ABA that competitive pressure can be derived from our proposed regulatory approach. If publishers retain territorial copyright then regulations will ensure a further improvement in the speed of supply and will place downward pressure on price.

The added benefit of this approach is the absence of any negative impact on Australian cultural production. We believe this approach adequately covers the following additional cultural questions.

***How large are these cultural benefits relative to the other benefits associated with books?***

***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?***

***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?***

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

The ABA does not support an opening of the market supported by a shift towards subsidies or increased funding, whether that is to authors or publishers

***How do cultural benefits generated by books differ from those from other forms of cultural creation or expression?***

Apart from acknowledging the depth and significance of the benefits to Australia from Australian authors the ABA makes no representation on this point.

***Are there reasons for government policies and/or funding of cultural outcomes to favour books over other forms of artistic or cultural creation or expression, or vice versa?***

The total value of funding and subsidies currently assigned to the Book Industry are significantly smaller than those of other cultural industries. This fact is significantly strengthened when government funding is taken as a percentage of industry contribution through economic measures such as retail turnover.

The ABA would welcome more innovation based industry funding, and support for writers.

## **Gauging the effects of the parallel importation restrictions**

***What happened, and what are the lessons, from reforms to parallel importation rules for other copyright goods in Australia and from New Zealand's experience in relation to books?***

The ABA refers the Productivity commission to the following MED studies on the impact of an open market in New Zealand

[http://www.med.govt.nz/templates/MultipageDocumentTOC\\_32747.aspx](http://www.med.govt.nz/templates/MultipageDocumentTOC_32747.aspx)

[http://www.med.govt.nz/templates/MultipageDocumentTOC\\_35584.aspx](http://www.med.govt.nz/templates/MultipageDocumentTOC_35584.aspx)

The ABA makes no representation on the volume of titles sold and their source subsequent to the legislation other than to note that the major chains operating in both New Zealand and Australia appear to have maintained significant relationships with local publishers.

***Are there particular factors that limit the conclusions that can be drawn in relation to the Australian books market?***

To a large extent the NZ market is reliant on the Australian market for distribution infrastructure. Any potential changes in the NZ market would need to be seen through the prism of Australian market conditions.



## International price comparisons

***How relevant are the findings of the earlier price comparison studies for the current study? In terms of gauging the impacts of parallel import restrictions, what countries should be included in comparisons? Are there improvements that could be made to the methodology employed in past price comparison studies to produce more useful estimates of price differentials? For example, are there more extensive and/or more reliable data sources available now that were not available in the past?***

The ABA holds no reliable data on price comparisons.

There is significant anecdotal evidence that there is a lag in response to advantageous currency fluctuations, in particular with list management of imported backlist titles. Anecdotal evidence suggests that this lag is not reciprocated when the reverse is true.

The ABA contends that a regulatory approach that includes a price cap to retain territorial copyright is sufficient competitive pressure to speed list management on price.

***What statistical or other evidence is there to suggest that availability is or is not a problem in Australia today?***

It is testament to the inefficient nature of the 7/90 day rule that few booksellers are cognizant with what is required to be directly compliant with the specifics of the legislation and few if any publishers either take issue with this fact, or are fully compliant themselves. This is evident in that the ABA has not received any statistics or reporting on the volume and efficacy of the rule since its inception.

The ABA has lobbied consistently since the introduction of the 7/90 rule for its modification.

***For example, what use is made of the 7/90 day rule?*** See above

***How easy is it to use?*** See above

***What difference has the emergence and growth of Amazon and other online booksellers made to availability?***

The ABA contends that a tighter regulatory regime is required to ensure that investment in warehousing and distribution keeps pace with international developments. The resulting benefits being an increased speed of supply to customers of Australian bookstores and improved competition with the overseas online retailers.

***What effect do the parallel import restrictions have on the range of books in Australia?***

It has been argued that by removing or even placing tightened performance criteria on the maintenance of territorial copyright for titles publishers will reduce the numbers of titles they stock and support.

The ABA contends that the establishment of performance criteria will ensure that publishers will make best business decisions on each title allowing the importation of those books not considered 'core business' or profitable.

Alternative distribution channels through American, UK and European wholesalers are a viable alternative for many booksellers who will be able to build more sustainable volumes and hence lower freight through importing either individually or via aggregation.

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

Rather than address each point in this section the ABA refers to points made earlier in its submission relating to the future of a regulatory model and makes the following contentions.

Having accepted the retention of territorial copyright the ABA recommends a regulatory framework with the capacity to adapt to market changes over the next decade or two.

Given the uncertainty as to the direction and sustainability of various technological developments the ABA reiterates the flexible nature of a regulatory approach to these developments.

The ABA notes that future changes in the markets of other countries will continue to have a significant impact on the domestic book industry and contends that a regulatory approach ensures that the Australian Book Industry can respond in a timely fashion.

### **Reform Options**

The ABA reiterates its desire for Canadian style regulations matched with the more creative use-it-or-lose-it approach of the current Australian 30/90 day rule.

It is clear that there is little support for the retention of a 90 day provision on backlist titles, and within any regulations the ABA contends that maximising speed of supply is paramount for consumers.

The ABA proffers a blanket 7 day rule within those regulations supplemented by the capacity for publishers to exhaust copyright if they are not compliant with the speed of supply provisions.

In addition, the adoption of many of the other provision of the Canadian legislation should be explored with a view to establishing similar provisions on price, exclusive copyright and exclusive distribution in the Australian market.

As with the current Act the responsibility for ensuring the importing of any title is not a pirate edition would lie with the importer, with the retention of penalties for importation of pirate editions

The responsibility for maintaining and proving the maintenance of copyright on any title remains with the entity claiming territorial copyright.

The ABA supplies the following links to the relevant regulations for the productivity commissions study.  
1999 Regulations

<http://canadagazette.gc.ca/partII/1999/19990818/html/sor324-e.html>

Amendments May 2008

<http://canadagazette.gc.ca/partII/2008/20080528/html/sor169-e.html>

In addition we attach a link to a recent government commissioned study of the Canadian Book Retail Sector.

[http://www.pch.gc.ca/pgm/padie-bpidp/rep/rapp-rep\\_07/rapport-pdf-report-eng.pdf](http://www.pch.gc.ca/pgm/padie-bpidp/rep/rapp-rep_07/rapport-pdf-report-eng.pdf)

Of particular interest are the findings that a controlled regime of parallel importation placed significant downward pressure on price<sup>2</sup>

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<sup>2</sup> The Book Retail Sector in Canada, Turner-Riggs September 2007, p9-10