

Mr Gary Banks
Chair, Productivity Commission
GPO Box 1428
Canberra

Dear Sir

Re: Review into the parallel importation provisions of the Copyright Act

I write as a publisher of Australian books for children concerned with the proposal before the Commission to change the current laws as they relate to the Copyright Act of Australia. I am also an author and therefore I am a beneficiary of the current conditions and protections. I have been a writer for children for more than fifteen years. I have, during that time, achieved overseas sales of many of my titles in a number of territories and have also been awarded recognition for my works winning the Children's Book Council of Australia Eve Pownall Award and also winning Honour book in that category. In 2000 I was awarded the Centenary Medal for Services to Australia through literature. I am currently the convenor of the Children's Publishing Committee of the APA and a board member of the APA. In addition I am on the board of ACLA, the newly established independent body formed to create and manage the appointment of an Australian Children's Laureate. I have a deep and passionate interest in children's literature in this country and have been responsible for discovering some of Australia's most successful writers for young people, including Markus Zusak, Michael Gerard Bauer and David Cornish. I have, during the long course of my career, been a preparatory school librarian and so I have also had first-hand experience of the ire of parents when a book is considered unsuitable for children. All this life experience has placed me in an unusual position of knowing the publishing industry from many angles. I am able to see the business side very clearly as well as knowing the industry from the point of view of the writer, illustrator, librarian and parent. This multi-layered view of the industry is valuable in appraising the proposed changes before the Commission.

My concerns regarding the proposed changes to the Copyright Act

Restriction of competition

I do not accept that the current Copyright Act is a restriction on competition; it is a bona fide means of allowing businesses time to prepare a business plan. It is not always possible to be certain that a book will do well and there can be reason for a publisher to watch sales in larger territories to see how successfully a title performs before committing to a print run here.

It might also be the case that an Australian publisher requires time to cost a title for reprint or to make changes to an edition to suit the local market, such as anglicising the text or applying an overseas cover. Such changes can be very time-consuming and often there are delays if the overseas publisher is tardy or does not supply finished files according to an agreed schedule. This may be because an author is late delivering a manuscript or because a cover designer or illustrator is late delivering the work. There are a number of reasons why a business plan may require time to prepare, none of which amount to a restriction of competition. We are producing cultural artifacts, not tins of tomatoes.

The 30-day rule

Some simplistic arguments have been put forward which lay blame at the door of publishers, who are tardy, lazy or inefficient because they have not made an edition ready quickly enough to satisfy either an impatient consumer or bookseller. The truth is that preparation of a book is time-consuming and, in Australia, is done with great finesse and attention to detail. Our editors and designers, our typesetters, production managers and inventory managers are all experienced men and women who do their jobs well.

We live in an impatient world. Waiting for a book is not something that necessarily causes financial loss of any significance and I would charge those who make such assertions to prove and quantify such losses. Some readers will jump onto Amazon or some similar resource and order the book. Others will wait. I do not believe it is possible to count these people in real terms. We have hearsay and some first-hand accounts to support both views. Neither amounts to a solid case for removing the 30 day rule.

Currently I have a contract with an American publisher for a very famous US author's anxiously awaited new title. This has been delayed many times for reasons known only to the author but we are now faced with the US publisher delaying the supply of files to us because they have been unable to make the work ready by the agreed deadlines. The book will now arrive in a bookstore in the USA ahead of ours purely because the US publisher can print faster than we can. We will have to work overtime to enjoy the benefit of our territorial copyright, and that is with the 30 day rule intact. Without the benefit of this protection I would have no logical reason to publish this author in an Australian edition.

Similarly we recently supplied a US publisher with files of one of our own very successful Australian titles, on time, and because they were able to rush their print job we came close to losing copyright on our own Australian originated work. This was a work that had originated as a direct result of my own interest in the author and my encouragement of his work. It was a labour of love that required literally hundreds of hours of mentoring. I would never have been able to devote that time to the work without the benefit of copyright protection and that work has resulted in export sales to over sixteen countries, large six figure advances and an excellent income to a creator who, previously, had been living hand-to-mouth. He now has an enormous following internationally and his own Wikipedia entry.

His books are widely available on the net in the US edition, our Australian edition is virtually invisible, but thanks to our copyright laws we are still able to keep a healthy Australian market for his works.

The 90 day rule

Children's publishing depends upon the 90 day rule. It is impossible to print or reprint and ship illustrated works in less time. In children's publishing the great bulk of four colour picture books are printed overseas. This is for reasons of cost, not efficiency. It is both inefficient and costly to the environment to continue to print 4 colour or higher picture books overseas but faced with the much higher on-shore costs of such printing publishers would soon stop making children's picture books if this was all they could do. It is a conundrum for me; I am a committed environmentalist and I find the carbon costs of such business to be deplorable. Were the printing subsidies still in place then I might have an alternative, but I do not. We have printers capable of producing these books in Australia but I must make a book which has some profitability in order to pay all the associated trades and businesses along the way and to ensure that the author and the end user are equally satisfied. Unlike adult publishing, regardless of my costs I cannot exceed \$30 for a picture book, and most are priced at \$24.99 to be competitive with other publishers.

I keep the bulk of my production on-shore, including the scanning, typesetting, editing and design and I pay a premium sometimes to do this but I have a personal commitment to keeping business in Australia wherever possible. My staff and I work long hours and often at breakneck speed to deliver a book to the printer, but I cannot avoid the time it takes to supply files, check proofs, ship and process a picture book through customs. We factor in three months to get a book from print to warehouse and this is absolutely the thinnest of margins with no room for error. I had the experience a few years ago of an entire bulk order delivered to a ship and that ship sinking in the harbour before it so much as weighed anchor. This was a book I had budgeted for as a significant part of my Christmas budget, and there was no possibility of replacing it in time. Nevertheless, barring such misfortunes the 90 day rule is a very important protection for children's picture books.

What are the real restrictions on competition for Australian publishers?

It is, currently, a difficult market for Australian publishers. The global recession and the impact this has had on Australia has resulted in a shrinking market for books. Our industry is under threat from steeply rising paper prices, the fall in the Australian dollar and increases in transport costs. Print runs are already smaller by a significant number of copies. Royalty returns to authors are impacted as a result. As a business we must make economic decisions to print and publish titles with the greatest possibility of return to us. The proposed changes will reduce our potential to do this and will result in even lower print runs because we will face the direct threat of our books, which have been sold into overseas territories, being dumped back into our market at heavily reduced remainder prices. Consider this scenario: We sell an Australian title to the USA. They print 50000 copies but for one reason or another sell only 20000.

The remaining copies could be sold to an international distributor who could then remainder/dump these back into our market, which may have been performing well. Our print run will be undercut and our Australian printed and published edition would stop selling.

We are a small market. Never more so than in the children's book industry. We cannot, and will never, compete with the enormous markets of the USA or even the UK for example. We do not have the benefit of a dollar that continues to hold value regardless of the real state of the economy. We are further from printers who can do the work cheaply for us and we do not have the enormous pool of talent to draw from that is ever replenished as it is in those countries. It can be proved that Australian creators exist on very tiny incomes. They are rapidly losing heart, and in the children's industry in particular we have found some of the absolute cream of Australian illustrators, for example, are ready to give up the game. Even with ELR, PLR, and grants or prizes, they cannot work and live at anything approaching the quality of life other working Australians enjoy. There are a tiny handful of such creators who do well. Most consider they are jobbing illustrators, and some describe themselves as 'colouring in for a pittance'. If you remove the only safety net they have, the protection of their copyright territory, you will reduce the income they currently get from overseas sales to the meager percentage of net receipts that is factored in to international contracts when their work is dumped back here or even to nil.

A restriction of trade would occur if the proposed changes are ratified. Some printing companies in Australia are viable largely because they print the Australian paperback versions of international best-sellers for Australian publishers. These paperbacks are available only in Australia and are cheaper than the hardback versions of the titles which will still be selling overseas as the paperback is released here. Our consumers benefit from this business by being able to purchase these cheaper paperback editions. Internationally a paperback is unlikely to be released within twelve months of publication of the hardback. There is no doubt that if the proposed changes take place there will be job losses within the printing industry.

Possible biases

I am concerned, despite the Committee's stated rebuttal, that the appointment of Ms Sylvan represents a conflict of interest for her. She has a well-reported history in regard to copyright issues both nationally and internationally and a clear personal bias. I believe her appointment represents a problem for this committee.

It is of concern to me that the terms of reference (attachment A in the Productivity Commission circular) infer that books are more expensive as a result of the current copyright laws. *'the operation of these provisions potentially results in higher prices and less availability of books to the disadvantage of Australian consumers.'* There is no evidence that this is the case; the Commission does not state an alternative view and nor do they suggest one.

This seems to me to be a clear example of a bias stated at the outset. The use of the word 'potentially' does not lessen the impact of what is a defining and value-loaded statement. If such a statement is made by your commission then it should justify and support it with evidence in the same way required of those who make submissions to it.

I am unaware of any examples of where a removal of tariff or protection has benefited the Australian consumer. We once had an on-shore clothing industry, for example. We have nothing significant in this industry now. Current copyright protection is not strong as it stands and is not, I appreciate, a tariff; however, it does offer slim protection for an industry already at risk owing to increased costs and decreased demand.

I do not agree that removal of the 30/90 day rule will result in cheaper books. There is absolutely no evidence to prove that this will happen. Even Bob Carr, in his biased opinion piece in the *Australian*, does not attempt to say that the New Zealand book buyer has benefited by getting cheaper books. He can only point to books being made available faster. Currently some Australian booksellers make a practice of selling books at an RRP over that recommended by publishers. If booksellers want cheaper books, they can take advantage of buying stock as a group and therefore at a greater discount, or else stick to the RRP. It is, in my opinion, true to say that there will be a benefit to booksellers should this copyright protection be removed, but it is not provable that such benefit would be passed on. I assert that the proposed changes, far from strengthening competition in Australian publishing, will in fact weaken it. International distribution houses will be the biggest winners as they buy up remaindered stock and dump it back into our country.

The cultural issues

The Australian publishing industry has grown over the time we have had a territory to sell. This is statistically provable. It is also statistically provable that when we had nothing to sell we barely had an industry. Removal of this protection is likely to take us back to the days when we were disinclined to publish Australian creators as there was no profit in so doing.

I am aware that the productivity Commission is not inclined to view cultural issues as relevant to the scope of their investigation, but to dismiss the cultural issue in relation to this discussion is akin to attempting a discussion about human rights without mentioning people. Cultural issues are bound up in this debate and cannot be extricated.

The argument for removal of copyright protection has come from some (but by no means all) booksellers. They are interested, I believe, in the blockbusters and have absolutely no interest in getting children's books faster unless these books are by J.K Rowling or Stephanie Myer. They do not care a great deal about Australian children's books because these are not the hot-ticket items. This does not mean Australian children's books are not just as important, however, and it is children's books that will be the most seriously disadvantaged if this change occurs. Australian children's publishing has become a viable industry employing many, many people across many areas including typesetters, freelance editors, designers, scanners, printers, booksellers.

Authors and illustrators look for international sales to give them cream on their home-based royalties and to give them kudos and a sense of worth. It is impossible to quantify the effect on a creator of a successful overseas sale, but I know from first-hand experience that it reinforces a sense of the creator's self-worth in much the same way that a great review or a huge sale locally would do. This is what helps writers and illustrators to believe in themselves more fully, to start that next book, to live on less than a student. These sales matter.

It is common practice for US publishers to 'Americanise' texts written in Australia, just as we 'anglicise' theirs. There is a very real danger that, if a US publisher overprints and undersells their edition of an Australian title, it will be dumped back into our market. The result is not simply that our edition fails to sell as a result of this unfair competition, but specifically our children will read Australian works which may contain more than American spellings; there could be entire slabs of text which have been re-written specifically for their market. We had the experience at Omnibus Books of a locally written text which contained a long description of an Aussie Rules football match, sold to the US where the American publisher changed all the spellings but also had the footy match re-written at their end so it became a gridiron match. If that book came back into our library system the game described would be unintelligible to the average Australian reader. There are parent bodies as well as literacy organizations that will not sit still for this.

Cheaper books - a furphy

It is said that the result of the proposed changes will be cheaper books, and in a lovely piece of internal logic, these unproven 'cheaper books' will somehow result in the raising of literacy rates among Australian children. The statement lacks any logic. If the government moved to force manufacturers to make sticky tape cheaper I doubt anyone would attempt to say that ergo people will use more sticky tape. People make personal choices about how they spend their money and making anything a few cents or even dollars cheaper will not raise literacy rates in this country. What would do that would be if the government decided to make teacher librarians mandatory in every State school and to give a special allowance to schools to stock those libraries. Premiers Reading Challenges are currently doing a good job of encouraging reading in schools, but where they could spend money on providing books to schools, which is what schools want, they prefer to spend money on television advertisements promoting the program. This beautifully illustrates my point – everyone makes personal choices about how to spend their budget – and those choices are not always good ones.

Besides, if cheaper availability of children's books were really the issue with literacy rates, then why is it that our literacy rates are not already sky high? Parents can get books without paying a cent for them. Australia has a wonderful public library system – one where families can join for free and where the local library, no matter how small, will try to get in any book a member requests whether through purchase or loan from another library. We already have a government system in place to compensate creators for exactly this kind of reading. Families who encourage their children to read commonly use libraries rather than bookshops to do so.

Literacy levels will rise when reading is seen as cool and rewarding and when more parents model the behaviour. Cheaper books – even if this were to be the case - will not be the key to this. Publishers, on the other hand, depend on sales to library suppliers as well as Trade bookshops. Remove our protections and the supply of Australian literature will slowly diminish until it is a trickle, and that trickle will reflect fewer literate choices, and more mass market ones. This is hardly a scenario where literacy rates will miraculously rise.

I urge the Commission to err on the side of caution in this issue. To not make a decision based on unproved economics, or on wild claims about the result being a nation of readers. This is no small matter you are deciding. Don't 'fix' what isn't broken.

Yours sincerely,

Dyan Blacklock
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Omnibus Books