

Submission by Jenny Darling & Associates to the Productivity Commission Inquiry into Copyright Restrictions on the Parallel Importation of Books

Jenny Darling & Associates (JDA) is a Melbourne based literary agency (<http://www.jd-associates.com.au/>) with around 50 active clients.

Australia has a flourishing and vibrant publishing industry. The removal of the parallel importation provisions of the Copyright Act would have a terrible effect on our clients and the industry in general.

Specifically:

*** 70% of our clients could expect to see their incomes decrease and their careers shrivel.**

Six of our clients have established, rock solid, international careers. 21 have been, or are about to be, published internationally. Eight or 10 are working on new books that we expect to be able to sell internationally. The rest are either writers of non-fiction or books for children, which have a peculiarly Australian focus so have not or are not likely to sell overseas. Except for the last mentioned group, the careers of all these writers would be negatively affected in the event Australia becomes an open market. They would be published differently, perhaps in fewer editions, and definitely they would all earn less money.

*** Those most affected would be those who have published only one or two books internationally.**

Our 21 clients who have been published internationally but whose international profile isn't yet solid would be very vulnerable under a new regime. It is this, the largest segment of our client list, that stands to lose the most under the proposed revision to the Copyright Act. In order to consolidate a career an author needs a committed and hardworking

publisher in their home territory. An Australian publisher is less likely to remain committed to an author if they know that the local market will be undermined by foreign editions. If Australia does not have its own territorial copyright the careers of some of these writers will contract. Some will choose to be published out of the UK or USA, and as a result will receive export royalties for sales in Australia. Export royalties are generally between one half and one third of what the author would earn from home royalties.

Not only would the writer's income decrease, it would be reasonable to expect that their profile and readership within Australia would diminish as their marketing and publicity would not be managed locally. A publicist based in New York or London is unlikely to have the time or resources to keep in touch with Australia's literary media, writers' festivals and booksellers, all of whom are integral to the successful promotion of an Australian author.

The eight or 10 authors whose next book we expect to sell internationally would be in the same situation as those mentioned above. Some we simply wouldn't sell. Other authors might move off shore which of course has implications beyond the author and the agent; income for editorial, publishing, printing, warehousing and distribution would go to foreign companies thus decreasing work for and inhibiting the growth of equivalent Australian industries.

*** Careers of established writers would contract.**

There is no doubt that the careers of established writers would continue if the Copyright Law were to change. How they are published would certainly change, although each would be different as the industrial situation differs from writer to writer. Their backlist sales might well be affected – particularly if they are genre writers – and their new books would have to be brought out in Australia about two years before they were published overseas so as not to lose Australian sales.

*** International sales make a huge difference to a writer's life.**

Rights income means that authors have more time to write. Increased earnings from foreign rights sales also mean they don't have to rely on grants from the taxpayer. As an example we recently sold a book in Australia. We got an advance of \$8,000. We were then able to sell it into America, where we received what is for America a very low advance of \$8,500 (but it was the middle of the financial meltdown). Then we sold it into Germany for €10,000. Currently we're in discussion with a German film director who wants to option the film rights. If we're lucky we might get a few thousand dollars, or euros, for these rights. So all up this author is looking at an income of around AUD\$30,000 for a book that took her about three years to write, because we have the ability to sell into different copyright territories.

*** We have fought to have ANZ recognised as a separate territory.**

It's worth noting that we were unable to sell the abovementioned book into the UK because we were not offering the UK publishers the territory of ANZ, which is something they expect. It was sent to twenty publishers and they all more or less said the same thing: we love it but as we wouldn't have ANZ rights our figures don't work. Here is one example of a rejection:

I have discussed this wonderful book at length with my colleagues here, and though all who have read have loved it, the exclusion of Australia in the rights we would acquire does make a difference. This limits our rights pretty much to UK trade, and ultimately we just don't feel that there is a big enough market here alone for us to go for it.

I say this very reluctantly as I do think the writing is fabulous and the story really propelled me along, but our selection process is such that in the current market I am going to have to pass on it.

I am sure you will place it elsewhere, and will try not to grind my teeth in envy when I see it on the bookshelves in the UK.

For years the UK market has made its success on the back of Australia. Now Australia is making its own success. We have fought against the colonial attitude and expectations of UK publishers to have them recognise our industry for its independence and vitality. Australian publishers and agents have become active players in the international rights market. More and more UK publishers are willing to purchase rights in a book without ANZ included; if the Australian market was opened to them we would take an enormous

step backwards. We should be proud of what we have been able to achieve over the past thirty years. Whereas once a writer had London on their copyright page now they have Sydney or Melbourne or Adelaide or Brisbane. We stand tall and independent.

***Price and availability of books in Australia.**

Anecdotally I hear no evidence from the readers I know, from people I talk to in bookshops and on planes and on the train that they think books are too expensive. I'm in and out of bookshops all the time and this is not something readers complain about. Those who belong to book groups would read about ten books a year but when they talk about the books no one talks about the price. They all know that if they go to Target they can get a current title with a 25–30% discount. There is already a healthy culture of competition and discounting in Australia.

I really believe that this argument—that books are too expensive—is essentially an argument of the elite (and I include myself in this group); people who regularly travel internationally. I know when I first arrived in New York in 1980 I gouged myself buying the complete backlist of writers such as Willa Cather and Walker Percy, books that you couldn't get in Australia. But let's face it, most people do not want to read Willa Cather's backlist, nor that of Walker Percy. Most people want to read the current bestseller and the latest award winner or their favourite crime novelist's new book. Australian publishers and booksellers are well placed to get these to Australian readers in a timely manner and they do so. Those of us who want the letters of Flannery O'Connor or Flaubert can ask our local independent to order it for us or buy it on-line.

***Australia is a small market.**

There is nothing we can do to change this. Everything is more expensive here. If we started to make a list we might never stop. Let's just mention a few: sneakers, jeans, Wiis, lipstick, Big Macs, telephones, cars, my underwear of choice. I mention the latter because it's relevant to this discussion. Although it is available on Amazon I cannot buy it there as Amazon will not ship it to Australia, because of trade regulations. Bizarre isn't

it that Amazon can sell books they have no rights to yet they limit the access to other goods?

The size of the market in Australia necessarily limits an author's potential sales and income. Selling rights separately into foreign territories allows agents to increase an author's earnings and exposure. The current parallel importation provisions assure our authors of maximum opportunity within Australia while giving them further prospects overseas. This is the ideal balance for our market and industry.

Conclusion

We, and our clients, value being part of a successful, self-sufficient industry that is internationally recognised for its vigour and originality and has been steadily growing for thirty years. If the current parallel importation provisions are removed we face market dominance by foreign companies and the loss of income and employment throughout the publishing and associated industries in Australia. The current situation is fair to all parties—authors, agents, publishers, booksellers and consumers—and the maintenance of the current rules will ensure the continued growth of Australia's literary culture and industries.