

SOUTH AUSTRALIAN GOVERNMENT SUBMISSION TO THE PRODUCTIVITY COMMISSION REVIEW: COPYRIGHT RESTRICTIONS ON THE PARALLEL IMPORTATION OF BOOKS INTO AUSTRALIA

1 The South Australian Government has a strong commitment to the arts.

The South Australian Strategic Plan (SASP) includes a specific objective about Fostering Creativity and Innovation. Specifically, Target 4.1 is Creative Industries: *Increase the number of South Australians undertaking work in the creative industries by 20% by 2014.*

The South Australian Government proposes that a culture of creativity helps economic growth by developing better products and services, more efficient businesses and better delivery of government services. Creativity is also important to building a vibrant community.

The current copyright arrangements have served the South Australian market well, enabling both wide distribution and timely availability of publications and resulting in a vital local book industry. Territorial copyright has been effective in promoting the publication of Australian literary cultural products.

While it is timely to review the arrangements in the light of broader market changes, such as the growth of internet retailers, and the experience of other countries such as New Zealand, the South Australian Government believes that any changes should be applied with caution – and supports maintaining the status quo arrangements.

South Australia supports a significant local book production industry with local authors, publishers, specialist contractors and editors, illustrators and designers, and printers all contributing.

The 2006 Census showed that in South Australia, 2572 people had their main occupation in the printing industry and 296 people had their main occupation in the book publishing industry.

South Australians have been particularly successful in establishing a thriving market for Australian children's books, with several local publishers who have identified and supported local authors to become international best sellers.

Successful South Australian authors nurtured and promoted by local publishers include:

- Kerry Argent who created the quintessential Australian picture book called *One Woolly Wombat*
- Mem Fox who created *Possum Magic* and *Wilfred Gordon McDonald Partridge* has gone on to publish 20 other titles in US markets, has a major international sales market and her book *Where is the Green Sheep?* won the Australia Picture Book of the Year in 2006
- Gillian Rubinstein who created *Space Demons* and many other novels for teenagers has become internationally famous with book and film

rights for her Japanese trilogy *Tales of the Otori* being negotiated for over a million dollars.

- David Cornish who is an award winning illustrator of children's books
- Peter Goldsworthy who has published 5 novels, been short-listed for many national awards, is on school curricula and won an award for stage adaptation of *Honk if you are Jesus*.
- Philip Jones who recently won the non-fiction Prime Minister's Literature Award for *Ochre and Rust*

Most Australian authors do not have the contacts or resources to access and negotiate with overseas publishers. None of these authors had succeeded in being initially accepted by an Australian subsidiary of an international publisher but all have gone on to garner a world reputation in their field. Australian publishers and authors continue to win a high proportion of international awards given the size of the market.

Wakefield Press (a South Australian based publisher) has built up a list of approximately 50 local new South Australian titles per year and supports these authors by publishing them in the Australian New Zealand market and international markets. In 2007/08 five titles were sold to publishers in overseas markets and at least 11 authors went on to successful involvement in interstate book festivals or awards.

Increasingly, Australian books are not just confined to an Australian audience - books travel in both directions – out of Australia to the US and UK and into Australia from those markets also. After 20 years as a thriving industry, Australia is publishing universal books of high quality.

Curiously the more successful Australian writers become at writing these universal books the more at risk they become if territorial copyright restrictions are lifted – the more territories their books are sold into, the more opportunity booksellers have of sourcing them outside their own market.

In framing its recommendations the SA Government requests that the Productivity Commission seriously addresses potential risks to Australian culture and the Australian book industry arising from any changes to the current regime.

2 Risks to the South Australian printing industry and evidence of the impact on the workforce

Printers in Australia rely on producing the large format adult paperbacks, which Australians can buy ahead of the overseas markets, many of which are obliged to buy the hardback version as first edition. If this component is lost through loss of copyright territory, the viability of Australian printers will be affected.

The printing industry employs the greatest number of people in the cultural industries in South Australia (2,572).

The South Australian printing company Griffin Press, a wholly owned subsidiary of PMP Limited, which is located in the northern Adelaide suburb of Salisbury, is one of the two major book printers in Australia. According to the Australian Competition and Consumer Commission (ACCC), they have a combined revenue of around \$115 million, and are considered to be the only two printers in the market competitive for longer print runs (around 5,000 and above) of mono books in standard formats. Griffin produces only books and specializes in mono book printing: soft and hardcover books printed in one colour with a full colour cover. These books are generally in the reading for pleasure category.

According to IBIS, Australian printers state that the current 30/90 day rules have promoted local printing due to the need among publishers for secure and quick suppliers (in order to meet the rules and retain exclusivity while practising a prudent 'just in time' inventory discipline), and that publishers will not have this need in a liberalized environment. Also, parallel imports will reduce demand for local production. The Printing Industries Association of Australia has estimated that the abolition of the 30/90 day rules would result in a loss of production of about \$30 million annually.

The negative effect on the printing industry of allowing parallel importing is ably demonstrated by a recent analysis by the ACCC.

The ACCC undertook a competition assessment of a proposed joint venture between Griffin Press, and McPherson's Printing Division (MPL), a division of McPherson's Limited. In it the ACCC made specific reference to the 30/90 rule stating:

- *Most publishers said that it is almost always impossible to print offshore or import directly and still meet the 30 day requirement.*
- *Publishers indicated that the cost of not complying with the rule is the loss of sales that may result from competition with parallel imports of the title.*
- *Undertaking a shorter initial run and relying on timely reprints to respond to market demand is seen by publishers as a way of managing these risks.*
- *Offshore printing is perceived by publishers as more risky, due to greater potential for delays in the printing process and/or freighting to Australia, and publishers are less willing to take on this risk at current prices when there are significant costs associated with not meeting the release deadlines.*

The ACCC considered that both offshore printing and the direct importation of books would impact on the pricing decisions of Australian printers. This in turn was deemed to have the potential to impact on the costs to publishers due to the greater lead time necessary for offshore printing, particularly for the large proportion of titles printed in Australia considered time sensitive.

Interestingly this analysis also suggests that without the 30/90 day rule there may be larger delays in the introduction of new titles to the Australian market.

Any policy changes which affect the viability of the local printing industry should consider and cost the necessary complementary structural adjustment programs.

3 *Risks to local content production and evidence of the impact on author earnings if territorial rights are surrendered*

Various South Australian authors and publishers have made representations to the South Australian Government that Australia should not surrender its territorial rights: they see these rights as the commercial basis for survival in their professions and emphasize the need to consider the implications of overseas laws on this situation, pointing out strong territorial copyright regimes in the US and UK.

Using territorial rights, an author can sell publishing rights for Australia, rights for translation into other languages and rights to a different edition for another marketplace.

In a majority of instances the main book earnings for Australian authors come from sales within Australia, and that the royalties are generally much higher per book for Australian sales than for overseas editions of the same title.

Territorial copyright supports the provision of differential royalties in different markets, but more importantly provides publishers the ability to offer authors separate deals and advances for each market.

Information provided by the SA Writers' Centre indicates that many Australian writers are struggling to make a living from their craft. Most can't. Any reforms (such as unfettered parallel importing) that reduce returns to Australian writers run the risk of further compromising the sustainability of the local writing scene. Certain regional events, which currently nurture local talent, such as the Salisbury Writers' Festival in the northern suburbs of Adelaide and the SA Writers' Festival run by the City of Onkaparinga in the southern suburbs, require a critical mass of local and published writers in order to be viable.

Sean Williams, a very successful South Australian author with four New York Times best selling novels and many awards states:

As someone who writes full-time, ie earns no (or very little) income from any other source, I am (like other primary producers) incredibly vulnerable to changes in the market, such as interest rates and regulation.

Writers such as myself run businesses, and as such we have expenses to pay. Were I to lose my Australian income, I simply would not be able to run a viable business. Not in lean years--and I am regarded as a wildly successful author by Australian standards, with numerous titles, awards, and no less than four New York Times bestsellers behind me.

I daresay that for a lot of local authors, who may be struggling to break out in the US or elsewhere, that risk is even greater. If we can't survive in such a climate, how will newer voices ever emerge? No amount of compensation for the industry will make up for that shortfall.

The ability of local authors to produce local Australian content critically depends on their ability to access publishing deals and to negotiate different royalties in their local market.

4 *Risks to the local publishing industry and evidence of the impact on publishers viability if territorial rights are removed*

The Australian publishing industry is relatively young: it started in the 1970s and its growth from an almost exclusive import market to the thriving export market that it is today has been a major achievement. The maintenance of territorial copyright has been significant in that achievement: abolition puts these achievements at great risk for the following reasons.

Australian publishers initiate and develop new writing and encourage new writers. While for many this is the major driving force for their involvement in the industry, they still need to run viable businesses. Publishing or distributing overseas products in the small Australian market can improve the viability of local publishers.

The current rules underpin the publishers' ability to support Australian authors: due to the small Australian market most sales by successful authors in the literary genres are 2-3,000 copies.

South Australia has around 20 publishers and there is a concentrated expertise in education publishing and a high focus on the export market. Publishers range from long established leaders such as Era Publications and Wakefield Press to the recent digital publishing success, Ballistic Publishing.

Removal of protection will undermine existing contractual relationships between Australian education publishers and their overseas publishers and also impacts negatively on royalty income, as the royalties will be paid on heavily discounted overseas sales.

Currently South Australian publishers attend the major international Book Trade Fairs in Bologna, London and Frankfurt to sell publication rights of Australian books to overseas publishers and most go to the US on a regular basis to sell in that market. This exchange is made possible by having the protection of territorial copyright to buy and sell titles. Without having Australia as a defined territory in regards some product there is nothing for an Australian publisher to buy and therefore less reason for them to go to the expense of attending these fairs to sell Australian product or rights.

Economies of scope are also significant factor in the viability of Australian publishers. Given the large scale of the continent and the small base of the industry, there is a need for publishers to be able to pick up and distribute overseas products in order to fill the boxes they send to each individual supplier. It would difficult for them to maintain distribution channels for only a small number of Australian titles.

The current rules provide local publishers with more certainty about likely demand, improving their ability to anticipate and maintain current print runs for the Australian and New Zealand market.

Establishing a profile and reputation as a new Australian writer is an expensive exercise – another function of a small and dispersed population on a large land-mass. The current rules also help publishers capture the benefits of marketing and promoting local authors and their books, providing them with more incentive to nurture local talent.

In a fiercely competitive marketplace where new product reaches bookshops constantly, the average life-cycle for many new books is only three months from publication- they either sell or are returned for pulping, redistribution to other locations, or are remaindered (dumped into marketplace at heavily discounted prices). A major risk of removing territorial copyright would be that remainders of other editions of Australian titles could be dumped here, distorting consumer perceptions of value in the Australian book market and undermining the capacity of publishers to sustain their investment in the development of quality Australian product – especially in the literary segment of the marketplace, which has already contracted considerably over the last 15 years or so on the back of an increasingly risk-averse publishing climate.

A diversity of publishers in Australia provides more chances of success for authors, and exposes a range of audiences to diverse specialist and emerging writers. This is something that cannot be easily replaced by government grants and other bureaucratic programs. Era Publications, which has 90% of its market overseas, has reinforced the value of the competitive independence of the book industry and put it forward as a low cost way of disseminating and promoting Australian culture, particularly compared to other cultural products such as the film industry.

Local publishers support a wide range of allied businesses. The SA Publishing Cluster is a group of local publishers of books and digital products who do an annual survey on the economic impact of the local publishing industry. They have indicated that:

In 2007 'there were ten respondents to the survey and the turnover of those respondents is estimated at approximately \$15 million – which represents a growth of over 30% for those businesses compared to three years ago. The small number of respondents makes it difficult to establish the overall turnover of all businesses in the cluster but ...it is probable that current turnover is in the order of at least \$30m annually' p3.

A snapshot of the local industry indicates respondents:

- included 5 who derive 50% or more of their sales from overseas and two who are almost wholly reliant on export sales*
- employ over 100 fulltime staff (132 actual)*
- outsource regularly to specialist outside contractors in IT, Warehouse, Freelance Editors and other consultants*
- pay royalty payments of almost half a million dollars annually to authors and other creatives*
- sold 467,000 books that financial year*
- totalled annual business turnover (for 10) was approx \$14,550,000*
- planned annual business turnover in 3 years time is \$34,800,000*

Several of the publishers in this cluster have provided information on the negative impacts of the changes to territorial copyright on all of the above aspects of their industry.

A viable local publishing industry is vital for supporting and further developing a vibrant local writing sector.

5 The critical importance of preserving and developing Australian culture

Australia's commitment to multiculturalism and the valuing of all cultures is an increasingly significant selling point for Australia as a destination for tourism, investment and education. Australian culture has many unique qualities and is influenced by social, cultural, family, education and personal interests, but as with all cultures, it is dynamic and is greatly influenced by language use and language structures – particularly of the mass media.

Preservation of territorial copyright is important for conserving genuinely Australian literature. A book that originates in Australia and is sold overseas may be customized for that market. If it is then parallel imported back into Australia, changes and adaptations for cultural, religious, grammatical, spelling, colloquial and visual purposes may alter the cultural content of the book to the point it is no longer 'Australian.'

South Australians benefit from regional writing and publishing in significant ways:

- Using local settings adds weight and more layers of meaning to the reader's experience
- Using Australian settings, characters and storylines places us firmly and more confidently in the world with a stronger sense of history and culture.

Australian society benefits from the spillover effects of having Australian culture and language reflected in its literature.

6 The role of local publications in increasing the literacy skills of Australians

The South Australian and Australian Governments are committed to increasing the literacy skills of Australian children and adult learners in order to improve Australia's standing in the global economy. The Council of Australian Governments (COAG) has agreed to a number of targets on literacy under the productivity agenda including:

- Universal access to early learning for all four year olds by 2013
- Lift the Year 12 or equivalent attainment rate to 90% by 2020
- Halve the gap for Indigenous students in reading, writing and numeracy within a decade
- Halve the proportion of Australians ages 20-64 without qualifications at Certificate III level and above by 50% between 2009 and 2020
- Double the number of higher qualification completions (diploma and advanced diploma) between 2009 and 2020

Increasingly, research demonstrates that building literacy skills begins in early childhood and is increased by building onto the home literacies and cultural

literacy practices of the family. The closer the match of the literacy product to the child's life experiences the greater the learning. This is why Australian publishers and educators are being encouraged to publish even more Australian books for children aged from birth to 5, 5 to 8 and 8 to 12 years.

As stated in the South Australia Early Years Literacy Program professional development resource titled Working within Community: Children learn about literacy from the moment they are born: *'Literacy development is a social and cultural process, the foundations for which are laid in a child's earliest experiences'* (Early Childhood Australia 2005, p1). Within their families and communities, children are immediately part of a range of interactions and experiences, which build their understanding, ideas and values about literacy.

'Literacy is connected to historical, social, economic and political circumstances and is influenced by factors such as age, race, class, occupation and gender: literacy is not the same for everyone. Literacy can only be understood by understanding what it means to be literate to the groups (families and communities) and institutions in which it occurs' (Spedding et al 2004, p8).

When literature includes and builds on home and community culture, young and adult learners are more able to make connections between their current knowledge and their new learning – making learning more effective. South Australia provides considerable leadership in educational literacy product development and this market is increasing.

In this light, it is of significant concern that parallel importing may have stifled the production of local children's books in New Zealand. A 2005 New Zealand Cabinet paper notes that some publishers have indicated that:

proliferation of remaindered children's books has made them very selective about taking on children's illustrated works because they cannot be produced at prices that match the overseas remainders.

The paper also recommends further monitoring of the situation in New Zealand.

Within South Australia, many publishers rely on the schools and education market for up to 50% of their sales. These publications have to be of very high quality to satisfy this market and must comply with multicultural and other social inclusion goals that are incorporated into their content.

Australia is one of the three main world suppliers of primary school literacy materials – with these being a major source of their export earnings. Era Publications, for example, is a very successful local publisher of literacy and education materials attracting export earnings of between 40 and 80%. This publisher produces high quality books that are translated into 19 languages including many notable Australian children's books.

The Productivity Commission should pay particular attention to the potential effect of any proposed changes on the development of quality Australian children's literature.

7 Maintaining the current healthy competition in the Australian market and possible counter arguments

The current *30/90 day* rule allows for a degree of competition - if the bookseller investigates and cannot get a book they want here, they can buy it direct from overseas. Some individual collectors specifically desire a particular overseas edition of an Australian title and booksellers are able to make these importations within existing rules. Individuals may also order direct from overseas. The presence of internet retailers such as Amazon introduces additional competitive tensions in Australia, especially given that individuals can buy from Amazon without paying Goods and Services Tax.

Books as a cultural medium are also subject to an increasingly competitive entertainment market with pay television, DVDs, mobile phone technology and increasingly rapid evolution of other Information Communication Technologies reducing the ability to absorb more costs.

Significant changes have already been accommodated by the industry. Since the advent of the GST the book industry has adjusted to smaller margins, streamlining and downsizing. Software systems calibrate the exact numbers of books a bookshop needs to re-order each week. Warehouse systems fine-tune orders so stock can be kept to a six month minimum. However, these efficiencies mean that print runs are smaller than before and book margins are lower.

South Australia has a healthy book production industry, in part due to having many independent book-shops and publishers that support local authors.

Some have argued that the classic books that are part of our culture are made too expensive for Australian families on low incomes to buy them. The *30/90 day* rule affects new books – not classics that were published in the US or UK many years ago. In most cases these have been in print for so long that they had been printed before these current rules came into force, so are not affected by them.

There are completing claims around the benefits of changes to the parallel importing rule and consequently the benefits of changes are not clear.