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Productivity Commission Study

Copyright Restrictions on the Parallel Importation of Books

Submission by The Scribo Group Pty Ltd

Summary

Territorial copyright is a component of authors' rights, and should not be outlawed for the convenience of a few large chain booksellers and department stores.

The publishing sector and its supply chain operate in an extremely speculative and high-risk industry, in which the continued existence of territorial copyright is the only bastion of confidence.

The current 30/90 day rules support the largest and most competitive domestic publishing industry available to a market the size of Australia's.

The claims of benefits from deregulation are unfounded, and the costs inadequately recognised, particularly given current economic insecurity.

We do not believe there is any model internationally which better balances the rights of authors and publishers with the expectation of consumers and retailers for range and timeliness.

We urge the Commission to endorse the current copyright system.

Our business

Scribo is a composite of four distinct businesses, based around a model of combined publishing and distribution, including both exclusive and third-party distribution models. These businesses are:

1. Gary Allen, a distributor and publisher in the mass market, with particular strengths in the fields of Australiana, true crime and cooking;

2. Bookwise, our broadest business, focusing on art and architecture, but also with some other genre bestsellers in business, fashion and other areas. Bookwise incorporates a publishing business, Cameron House. Bookwise is also a general distributor including to larger bookshops;

3. Tower Books, whose core business is high-end illustrated art and design, but also some Australian literary fiction and some business titles, such as Donald Trump's books; and

4. Brumby, a wholesaler and distributor, focused on the 'mind, body, spirit' part of the market. Approximately 70% of Brumby's business is in books, but it is also in multimedia.

Overall, Scribo has a turnover of around $50-60 Million, with EBIT margins in the mid single digits. We have a current headcount of around 140 employees, including 30 sales reps, 30-40 administrative and marketing staff, around 55 in warehousing, and a lean management team of 15.

Scribo is perhaps supplier number nine or ten at any given time in the Australian marketplace, representing approximately 5% of book distribution into the trade.

Since 2008, we have been owned by Gordon & Gotch, which is in turn a subsidiary of PMP Limited. We note that despite being part of a broader publishing, printing and media business, there is limited vertical integration potential for our company, so we remain exposed to all the risks and vagaries of the publishing industry.

Our source of materials is varied. We are a substantial importer of books, but across the whole Scribo business, approximately 40-50% by value is Australian-published. A large proportion of 'spiritual' books are actually self-published, and the existence of specialist providers such as Brumby is critical to this market. It is a business which might not be viable if parts of its value-stream based on territorial copyright were undermined.

As we are a blend of publisher and distributor, Scribo has an extremely broad view of the marketplace, and we believe we are well-placed to comment on a range of issues which should be taken into account in the Productivity Commission's deliberations on the question of territorial copyright and its associated legislation.

Territorial copyright

The various economic arguments against the deregulation of territorial copyright, including the likely impact on authors, publishers, printers and other supply chain participants are well-known, and doubtless expounded in a wide range of submissions to the Productivity Commission's inquiry.In the end, the arguments boil down to two core propositions:

1. Territorial copyright is in property terms a component of authors' rights, and should not be outlawed for the convenience of a few large chain booksellers and department stores; and,

2. The publishing sector and its surrounding supply chain operate in an extremely speculative and high-risk industry, in which the only bastion of confidence is the continued existence of territorial copyright.

We believe the issue of market confidence – particularly in the current economic environment – is the most profound question before the Commission. This is because it is the peg on which the whole of Australian publishing strategy is currently hung.

Case Study: Rich Brother, Rich Sister

As an illustration of this, we have a new title, Rich Brother, Rich Sister by Robert and Emi Kiyosaki, which is due for release in early 2009, and which will meet the territorial copyright requirements of the 30-day rule. The book sits in an interesting position between the business and spiritual markets, and is about two different paths to, and concepts of 'wealth' in a single family: the first about traditional financial wealth; and the second describing a parallel journey through Buddhism to spiritual wealth.

This is a US title for which we have Australian distribution rights. As we have judged that this book has a reasonably substantial potential market, it will involve an initial print run of 10-15,000 copies, which will also warrant a co-spend on marketing. Typically, this latter investment will involve:

1. A national author tour, costing at least $10,000,

2. The appointment of an external publicist to promote the launch of the book, involving media coverage, public readings and speeches, book signings and other such events, perhaps costing $5,000;

3. Co-operative and other advertising with bookshops. This particularly involves payments to booksellers to subsidise their catalogues with guaranteed promotion: essentially an advertising component of bookshop income. This may cost another $10,000.

For a title such as Rich Brother, Rich Sister, this is a substantial spend. Scribo makes this kind of investment perhaps four to five times a year with our larger titles (generally imported rights).

Other well-known titles for which we have undertaken such marketing in recent years have included: The White Masai; The Last Kabbalist of Lisbon; The Deposition of Father MacGreevy; and the winner of the Orange Prize, We Need to Talk About Kevin.

Without the confidence engendered by territorial copyright, none of this investment would take place.

There are a range of reasons and consequences surrounding this decision:

1. We have no incentive to create a market for competitors who wish to profit from our investment without contributing themselves, and we would be loath to share advertising and promotion spending with bookshops who might then source their copies elsewhere;

2. It is likely as a consequence that we would review the decision to secure the rights in the first place, unless they were severely discounted (a loss to the author, with little or no prospect of concomitant gain in the home or international rights price);

3. We would be exposed to imports of unsold (remaindered) books from the US market, or cheap, lower quality prints (including pirate copies) from elsewhere;

4. There is no guarantee that this book would be made available in Australia at all, except by import for those who sought it out. (The Commission will no doubt note that individual requests via bookstores are met at well above either a normal Australian or foreign recommended retail price);

5. It should certainly not be assumed that in the absence of a local right, booksellers will come to the party and import the book anyway. This would mean tying up capital in copies of a book, rather than the current sale-or-return model of Australian publishing, and this is contrary to the preferred risk model of the bookselling industry;

6. The loss of advertising and promotion funds to which publishers and booksellers both contribute might not be so significant for chains or department stores, who will have the scale to continue publishing catalogues, or who may regard some books as loss-leaders, but it would be a serious blow to the marketing ability of independent and smaller-group specialist bookstores, who rely on publishers' interest in promoting books; and,

7. As a corollary to the last point, the removal of shared advertising and promotion funds is exacerbated by a disparity of opportunity to be conferred by a deregulated market. This is to say that while larger booksellers may have the market power to take advantage of a parallel market, smaller bookstores will not have either the inventory finance, or the returns to scale to make it worthwhile.

The push to outlaw territorial copyright in Australia is, to our mind simply an attempt to transfer market power from authors and publishers – who are the risk takers at the centre of book production – to retailers.

If there were any evidence that titles without an Australian copyright were somehow cheaper – and there is a vast number of titles currently imported which are sold either at or above the international price – then there would be a stronger argument. In its absence, this looks like nothing more than a market grab, and one which presents huge risks to investment, jobs, and the range of books available to Australian readers.

Scribo in fact has a better understanding than most of what the market for new books without Australian copyright would look like. This is because, alongside our copyrightable publishing business, we operate in the middle-ground of exclusive distribution for foreign publishers.

Case study: Major Cookbook [1]

As an example of this, one of our strong sellers in 2008 was a high quality cookbook, for which we imported approximately 15,000 copies from the publisher. This type of agreement involves us taking significant financial risk on inventory and shipping, warehousing and distribution costs, as well as adding GST into the landed price.

It does not prevent parallel importation, though the offshore publisher will not wholesale direct to an Australian distributor. If an Australian bookstore wished to obtain a commercial-scale volume of copies to sell in competition with our imported edition, it would need to do so through a third-party wholesaler.

This would also be the requirement for a parallel-imported edition of an Australian-copyrighted book if the territorial copyright were deregulated, as the foreign contract would still typically prohibit export to a foreign territory where the author had sold the copyright. All Australian booksellers already have accounts with these international wholesalers, such as Baker & Taylor, Ingrams and Gardners.

Despite this, we do not currently discount the cookbook, both because it is not available to us from the publisher at such a price, and because we believe it can be profitable at a reasonable market price. And despite that, we are not seeing the book imported around us, for three reasons:

1. It is not strictly ‘open slather’, as we have an exclusive distribution contract, which means a bookseller would need to invest in substantial scale to make it worth their importing the edition separately;

2. The book, even if we sell 15,000 copies, is still a niche product, which is not the target for parallel importation, unless it is dumped, which is not currently the case for this title (no publisher would take risk on titles which are probable subjects for dumping);

[1] Name withheld for commercial reasons

3. There could be an opportunity identified either for separate importation of this book, or for separate importation of any sequel, if there is a demonstrated market above expectations, in which case we would be exposed to the market development costs for any free rider.

This example is pertinent to the Commission's inquiry because it is a model of distribution which makes a book available in Australia which might not occur under a strict deregulated market.

The reason for this is essentially that this is a niche product, justified as part of a broader portfolio of risk distribution. If we did not have any element of that portfolio which was immune to parallel importation, then we would not be able to take risk on titles such as this. And we note that large-format and reasonably expensive cookbooks, which are part of the gift economy in a falling market, are far from a low-risk investment.

We can currently include this type of book contract in our mix. However, if it were the only form of exclusive arrangement available to us, we would make less of this sort of title available, as our ability to spread the capital risk incurred on any given title would be reduced.

Again, we would stress here that this is a portfolio business. There is a tendency for those who would benefit most from copyright removal to focus post hoc on successful titles, and to suggest that they exist as arbitrage editions, without taking into account either:

1. the risk taken by the publisher in bringing the book (and potentially a range of earlier, and less successful titles by that author) to market; and,

2. the losses borne by titles which do not succeed, and which must be cross-subsidised within the portfolio by more successful books.

It would be a grave error by the Productivity Commission to focus on bestsellers and assume that the margin on these can be simply transferred to retailers without profoundly undermining the whole economic structure of Australian publishing.

Impact of copyright deregulation

There will be three likely impacts from Australian chain retailers and department stores taking advantage of copyright deregulation.

The first (as we proposed in our analysis of the case study above) is that larger retailers will narrow their range as the market moves from sale and return of books (where publishers take the risk by agreeing to accept unsold books without cost to the bookseller) to firm sale (where the risk is transferred to the booksellers, who have to order and pay for fixed quantities of books from publisher):

- this need to finance inventory risk will lead to harsher decisions on range of books in stock; and,

- the benefits of parallel importation are really only available in the bestseller market.

The other two impacts will be through dumping of remainders and using market power to force the transfer of margin from publishers to retailers (both of which are really only available to large-scale players).

These choices will mean limited interest in distribution of niche product by the chains and department stores, and limited capacity (and doubtless closures) in the independent market.

All of this has flow-on for Scribo, which in turn has impact on our investment, and will increase the average cost of third-party distribution, which we provide on a competitive basis to smaller publishers.

At the moment, the modal component of distribution (including warehousing, delivery and return) for a book in Australia is around 5% of the recommended retail price.

The reduction in scale due to the various impacts described above would increase this cost, which would further compound the uncompetitiveness of Australian books with dumped imports – or otherwise simply raise prices.

We also note that this distribution cost (which is higher than overseas due to scale) is never substituted in the comparative pricing of Australian and international books, which is a constant error in the methodology of those who argue for removal of territorial copyright. Similarly, little thought is given to the cost of seafreight.

Conclusion

Scribo believes the current 30/90 day rules support the largest and most competitive domestic publishing industry available to a market of Australia's size.

We regard the claims of benefits from deregulation to be unfounded, and the costs to be inadequately recognised, particularly given the broader economic insecurity.

The continued existence of territorial copyright is the only bastion of confidence for an extremely speculative and high-risk industry, because it provides the security of intellectual property needed to justify the level of investment required.

We do not believe there is any model internationally which better balances the rights of authors and publishers with the expectation of consumers and retailers for range and timeliness.

We strongly encourage the Productivity Commission to recognise this, and to endorse the status quo.