

Penguin Group (Australia)

SUBMISSION BY PENGUIN GROUP (AUSTRALIA) TO THE PRODUCTIVITY COMMISSION

In 2001, the Senate Legal and Constitutional Committee conducted an enquiry into the Copyright Amendment (Parallel Importation) Bill 2001. At that time, Penguin, through its membership of the Australian Publishers Association opposed the Bill, supporting instead the balance provided by the Copyright Act of 1991. We can see no reason to change our position; we therefore respectfully table the submission below.

INTRODUCTION

1. About Penguin Australia

Penguin is Australia's largest supplier of books to the retail trade. It is referred to as a "trade" publisher and distributor, that is, it stands apart from those known as educational publishers, although Penguin does enjoy some revenue from the selling of some of its titles in tertiary and secondary schools, together with sales to primary schools, mainly for library use. Principally, though, its books are designed for the consumer.

The company has been in existence in Australia since 1946. From a small concern set up to sell and distribute Penguin UK titles here it has grown into the market leader of today, paying taxes, publishing over 200 Australian books each year, and employing, training and developing staff. It currently employs 70 people (plus freelancers) in its publishing division, 80 in sales, 28 in marketing and 5 in general administration.

In 2008, Penguin Australia placed \$10.2m of printing with Australian printers. This work was primarily placed with McPherson's Printing Group but also with PMP-owned Griffin Press and BPA Print Group.

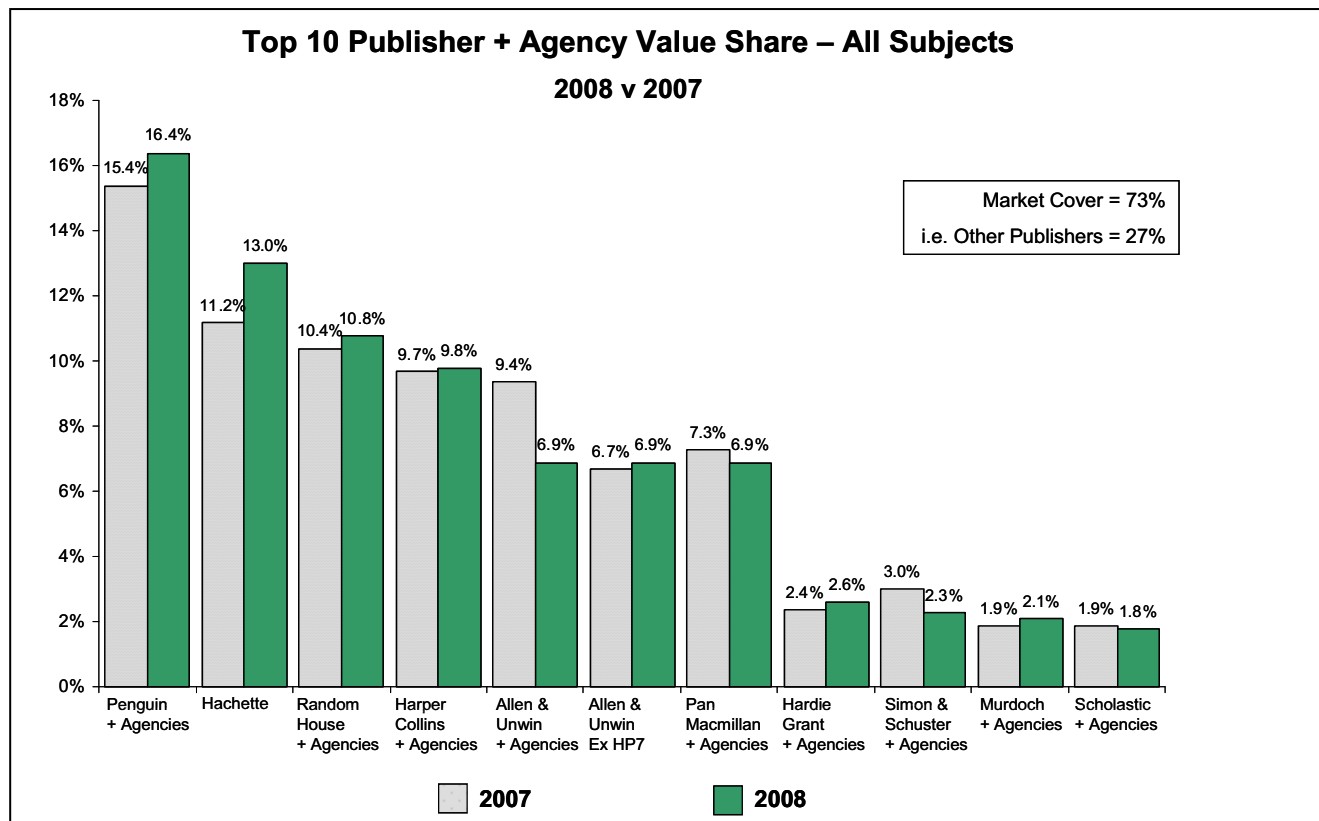
Penguin is one of the Australian publishers who invested in Title Page, the Australian Publishers' Association industry-wide online price and availability service for booksellers.

Penguin's revenue stems from three main sources, viz:

- a. The importation (or local production) and sale of books from its sister companies around the world. Chief among these is Penguin UK, who accounted for 93% of this stream in 2007, but books from Penguin companies in the US, New Zealand, South Africa, India and Canada are also imported.
- b. The publication and sale of books from its own local publishing department. These are principally written by local authors (Kaz Cooke, Bryce Courtenay, Monica McInerney and Tim Winton are good examples of writers for adults, while the children's list features such authors as Mem Fox, Morris Gleitzman and Paul Jennings), although occasionally we may buy Australian rights to the work of an overseas writer to add to our list.
- c. The commission earned by selling and distributing books on behalf of (currently 7) small-to-medium independent Australian publishing houses. Examples of these are Text Publishing, Scribe and Black Inc.

The table below shows the relative size of these income streams in 2008:

Imported Books:	UK	49.9%
	Other	2.0%
Local Publishing		37.5%
Commission Agencies		10.6%



AC Nielsen reports show clearly that our market share makes us the biggest trade supplier by a fair margin. At end 2008, publisher market share (courtesy AC Nielsen) appeared as above:

This is not an exercise in trumpet-blowing; rather, it is meant to establish our *bona fides* and to show that we are, due to our size, in constant touch with all other stakeholders and as such should be able to predict what could happen to each of them if the current legislation were to change.

We believe that the parties affected are:

Authors and their agents
Publishers
Distributors
Booksellers
Printers
Consumers
The Government,

and we have decided to present our submission using those key players as our headings where appropriate. We will examine each one separately, giving our view of current practices and postulating what changes would occur in a parallel-importing world. There will be two sections: The current and future picture vis-a-vis imported books (or overseas-originated titles produced here) and the current and future picture as regards locally-published titles.

SECTION ONE: OVERSEAS – ORIGINATED BOOKS

Before proceeding down this path, we should explain how books originating in other countries are currently made available to the Australian public. (N.B. we are specifically excluding here those titles for which separate Australian rights are purchased by an Australian publisher: these will be covered within a local publishing context).

No such discussion can take place without reference to the Copyright Act of 1991 which righted the wrongs of the past by making publication of an overseas title in Australia within 30 days of its overseas publication date a condition for establishing territorial copyright in this market. Further to that, books must be available post-publication within 90 days of request, or copyright is forfeited until stock is again available. The public - and booksellers acting on their behalf - may also import copies of competing editions if they wish, provided they are not for resale. The above legislation is known as the 30/90 day rule and we feel it has served all parties well, preserving as it does the foundation of territorial copyright while ensuring overseas titles are made available within a reasonable time.

Imported books originate from two main sources: the US and the UK. Works written by American writers and originally published there are typically sold to UK publishers who buy what are known as Commonwealth rights. This means they are buying the exclusive rights to sell their edition in the UK, Australia, India and South Africa. It's important to note that despite most large US publishers having sister companies in the UK, it is by no means axiomatic that UK/Commonwealth rights are sold to these relatives. Random House in the US for example, will sell rights in a title to Harper Collins UK or Penguin UK as readily as they will to Random House UK.

Once these rights are purchased by a UK publisher, the need to make the book in question available in Australia within 30 days of first publication (in this case, probably in the US) is recognised. Early shipment of stock to Australia, or in many cases, an Australian printing, is organised so that territorial copyright is established. (It would be wrong to say that this happens in all cases: if an Australian distributor has decided that a particular title is of minimal interest to this market and is accordingly importing a handful of copies, they may well decide to forgo the establishment of copyright and publish a few months later. Books of any importance, though, are generally published within the required 30 days).

Books originating in the UK are, when contracted by a UK publisher, signed up for exclusive sale in the UK and Commonwealth. Once that happens, the same process and principles apply as described above for US-originated titles.

In both cases, it's common for an agent to control the sales of rights in both the US and UK markets, with the same outcomes.

HOW WOULD KEY STAKEHOLDERS BE AFFECTED IF PARALLEL IMPORTATION OF OVERSEAS-ORIGINATED BOOKS WERE ALLOWED?

INTRODUCTION

One cannot help but observe that a healthy amount of parallel importation is currently legal under the 1991 Copyright Act. Consumers are spoilt for choice. They may order, for private use, any edition of any book in the world. If publishers fail to establish territorial copyright on any title, it may be brought in from alternative sources *ad infinitum*. On-line buying of books from overseas sources is a freely available service and has the bonus of being GST-free. And bricks-and-mortar Australian booksellers provide a range of local and imported titles, backed up by high-quality customer service that is the envy of overseas visitors. Overseas titles are made available here in a timely fashion and at prices competitive with those overseas: the internet has made price comparison so simple that all Australian distributors are keenly aware of foreign, on-line competition.

DISTRIBUTORS

We're starting here as it's the change in the behaviour of this sector which will most affect other stakeholders.

WHAT HAPPENS CURRENTLY?

Books are either imported from the US or UK (more usually from the UK under the UK/Commonwealth rights system outlined above) or printed in Australia under licence. A lot of science is brought to bear when it comes to deciding how many copies should be imported (or printed here). Sales histories of similar titles are examined. The track record of the author, if known, is considered. The promotional possibilities are canvassed. Can author interviews be done from here or should we bring the author to Australia? And what price should the book be? Does it bear comparison with the current exchange rate? Can we publish a cheaper format here – perhaps a trade paperback instead of the overseas hardback?

New books of any importance are published within 30 days of first overseas publication to establish territorial copyright.

Books are marketed and publicised and this is a vital point. Local distributors have become adept at promoting imported books in Australia. This may take the form of advertising via TV, radio, newspapers, magazines, on billboards, on bus shelters. Overseas authors visit to promote their works either as stand-alone tours of the country backed up by media appearances, signing sessions and events with retailers or as guests of the many literary festivals which occur annually in every state. Extracts from their works are sold to print media across the country. The industry supports a strong and healthy publicity and promotions sector which does a very effective job.

In order for the above to happen, specific publication dates are set for the books being promoted. As all this activity is organised to coincide with the availability of a book, distributors need to control release dates while still being vigilant about the 30-day rule.

In recent years, there has been a consolidation of book distribution centres in Australia. Penguin, Random House, Harper Collins, Hachette and Pan MacMillan all run large and efficient warehouses which contain their own books as well as those of smaller publishers. Major investments have been made in logistics infrastructure by these major players, resulting in rapid order turnaround and speedy delivery.

Pearson (Penguin's parent company) spent \$18m to establish its Scoresby distribution (UBD) centre on Melbourne's outskirts which opened in 2002, and in 2008 spent a further \$4.5m upgrading the facility. It employs 150 people and currently despatches 17 million volumes each year, freight free to its retail customers in both Australia and New Zealand.

Backlist titles are stocked by local distributors. Using Penguin's sales as a benchmark, about 40% of all sales are from books published more than a year ago, referred to as backlist. Under the current legislation, distributors have an obligation to stock and supply booksellers and their customers with these titles, and most distributors recognise this and act accordingly. Very slow-moving titles (say with sales of less than 10 copies a year) are typically flown in from the US or UK on demand.

WHAT WOULD HAPPEN IF PARALLEL IMPORTATION WERE ALLOWED?

It's not overstating the case to say that chaos would ensue.

Without the certainty provided by territorial copyright, setting import or print quantities would immediately become a guessing game. Would booksellers buy from the local distributor, or would they import a US edition or perhaps a UK edition? Distributors would become cautious in their ordering. Let's take the example of an author who writes one book every two years and who sells well. And let's call her Author A. Penguin sells about 120,000 copies of a new book by Author A in Australia. Remove territorial copyright and we'd have to guess – and that guess would be set at around 70,000 copies. We'd be wrong of course, but whether that figure is too high or too low is anyone's guess.

Publishers and distributors routinely offer 'Sale or Return' to booksellers for new books, keeping the returns window open for a year after publication. In an open market, the larger bookselling concerns would quite likely place an initial firm sale order from an overseas wholesaler or publisher and then draw on local sale or return stock to top up. The uncertainty generated by this behaviour markedly increases the risk of understocks as distributors slash opening orders – a bad result for all parties: distributors, printers, booksellers, authors and consumers. A further worry for local distributors is the return of unsold stock to them which has come from another source. Crediting booksellers for stock bought elsewhere would create major problems and would bring into question the current sale or return policies.

Now let's look at the marketing of a new book by Author A. In addition to cooperative advertising - where the publisher pays money to the retailer to support their marketing efforts - there is also consumer advertising and the author usually visits Australia for the publication of a new book. It's an expensive exercise for Penguin but the sales justify it; it's difficult to imagine any company making that sort of investment in promoting books which may emanate from several alternative sources. The same goes for the rest of the publicity effort.

A major part of any marketing campaign is the appearance of books in retailers' catalogues. These are funded by the publishers, who pay the retailer for their books' appearance. The bookseller in turn agrees to stock the title/s in question and to merchandise prominently. This practice would diminish markedly if publishers expected rival editions to enter the market and gain the benefit of their own co-operative advertising funding.

We'd clearly be looking at a marked reduction in advertising spend, author tours would be a thing of the past, and there would be significant job losses from the publicity departments of all distributors. As a result of all this, actual numbers of imported books sold would drop, with concomitant job losses in sales and distribution areas....

.....and this is without the added uncertainty created by no longer being able to set firm publication dates. Importing booksellers would rush to market to steal a competitive march, so planned campaigns (particularly the running of extracts in newspapers, who understandably insist on printing these just prior to a book's availability) would be impossible to orchestrate.

And backlist stockholding? This picture is less clear. Distribution centres need throughput to amortise their fixed costs, so the temptation would be to continue to hold the number of titles currently stocked in the hope that booksellers would continue to order locally. What seems clear, though, is that backlist ordering from local sources could only go in one direction. Given that volume sales of new books would decrease and so would backlist (though to what level is uncertain), throughput would fall and jobs would go.

HOW WOULD BOOKSELLERS REACT TO THE LOSS OF TERRITORIAL COPYRIGHT?

WHAT HAPPENS NOW?

Booksellers order forthcoming new releases in sensible upfront quantities, secure in the knowledge that they'll be able to re-order and receive more stock quickly of those books that sell quickly upon publication.

Booksellers know in advance when each month's new releases are to be delivered and can organise their staffing levels accordingly. These shipments typically arrive in the first week of the month from all distributors and receipt is a lengthy process: each book has to be stickered with the retailer's own details of price and supplier code, all invoices have to reconcile with the order and once this has happened, last month's new book displays are taken down and replaced with the current range.

Ordering decisions by booksellers are heavily influenced by the distributor's marketing and publicity plans. Knowledge of planned publicity, advertising, reviews and author tours is essential, both in deciding purchase quantities and in-store merchandising.

In an age in which computers control backlist stockholding, book retailers are able to hold wide ranges of backlist titles in small quantities, re-ordering regularly in the knowledge that Australian distributors can replace them efficiently from local warehouses. Most booksellers carry such stock in 1s and 2s and re-order daily, thus maximising stockturn and cashflow. Special orders for customers who require books not normally stocked by a retailer can similarly be supplied quickly.

WHAT WOULD HAPPEN?

Frankly, this is fluky and unpredictable. Perhaps the best way to anticipate behaviour is to divide the retailers into three main categories, each of which would probably behave differently. These are:

1. Chain Booksellers

This sector is dominated by Angus & Robertson, Borders and Dymocks, who together represent about 35% of the trade market. We assume they would either:

Use their size to negotiate favourable terms with wholesalers in the US (Ingram; Baker and Taylor) and the UK (Gardeners) and buy in bulk from them when exchange rate fluctuations allowed them to enhance their margins when compared to buying locally. We strongly doubt whether this would have a downward effect on prices. These retailers, struggling with swingeing rents levied by the owners of the shopping malls which they inhabit, are already selling some titles at above RRP in order to stay profitable. If they could buy more cheaply from time to time it's doubtful whether the improved margin would be passed to consumers.

Use the threat of importing to leverage more favourable terms from local suppliers. If they were successful in this, it could only have an inflationary effect on Australian book prices as local suppliers recovered the additional cost of doing business with these major players.

2. Discount Department Stores

There are three major players: Big W (part of the Woolworths Group) and Kmart and Target (now owned by Wesfarmers), together making up about 20% of the market. Typically they don't carry a wide range of titles; rather, they cherry-pick the more mass-market titles each month and sell them at prices lower than the rest of the trade. With around 500 retail stores across the three brands, they can have a huge market share – sometimes over 50% - of certain titles. There is thus a huge amount at stake when distributors come to place import or print orders for these big books. Should exchange rates become favourable, it's highly likely that these companies, used as they are to importing a wide range of goods, would simply place a small order of a major title from a local distributor to ensure simultaneous supply, but back it up with a cheaper bulk order from overseas. This would result in either a large quantity of unsold stock in the local distributor's warehouse, or (if that distributor could react in time) a vastly reduced import or print order with concomitant cost and price increases as economies of scale are lost.

3. Independent Booksellers

The Australian book trade has an enviable reputation and at the heart of this is the quantity and quality of its independents. These businesses depend on close links with local distributors, and any diminution of local stockholding or promotional activity would hurt them severely. Lacking the economies of scale of the Chains and Discount Department Stores, which allow both shallow and deep discounting, they rely on service, stockholding and promotional events such as in store author appearances to provide value to their customers. The reduced availability of stock and the diminution of author tours from overseas writers which would flow from the removal of territorial copyright would have a disastrous effect on these businesses. No doubt the Commission will receive submissions from many of these booksellers and we hope it will give them serious consideration. This sector of the retail market makes a significant contribution to Australia's cultural landscape and while they have managed to survive in the face of increasing competition from the big Chains and Discount Stores, any change which would put them at a disadvantage may see some of them disappear.

WHAT WOULD HAPPEN TO AUSTRALIAN PRINTERS IF TERRITORIAL COPYRIGHT WERE ABOLISHED?

We imagine the Commission will receive submissions from the printing industry giving details of throughput and employment numbers, but we make following points:

WHAT HAPPENS NOW?

Under the current Copyright Act, the necessity to print many imported titles in Australia has become constant. 40% of Penguin's print bill stems from the printing of such books at McPherson's.

We remind the Commission that the two biggest local printers, Griffin and McPherson's, wanted to merge in 2007, citing an uncertain future without such a merger, but that the ACCC blocked the move on the grounds that it would stifle competition.

WHAT WOULD HAPPEN?

The removal of territorial copyright, as we have seen, can only mean fewer books being bought from local distributors and, as a corollary, more imports. Only the degree of change is in question. With the certainty of decreased throughput from the printing of overseas books and with two big printers already struggling, it seems inevitable that one, or both, would close. And as the ACCC observed, the absence of competition among printers would “likely lead to higher book printing prices (or lower service conditions) for publishers, and, ultimately consumers.”

WOULD THE CONSUMER BENEFIT IF TERRITORIAL COPYRIGHT WERE REMOVED?

WHAT HAPPENS NOW?

We believe the Australian bookbuyer enjoys the best of all possible worlds under the current legislation. We suggest that the consumer is interested in three things: availability, price and service.

As we have seen, overseas titles are either available here within 30 days of original publication, available via special order through a local bookshop, or online from a local or (GST-free) overseas online bookseller. All books are available to our consumers all of the time.

One can always make a case that imported books in Australia are more expensive than in their country of origin by focussing on a small number of specific examples which support the theory. Leaving aside the quite sensible proposition that imported books have every reason to be dearer here – after all, they’re usually coming from a long way away and freight costs money – this simply isn’t the case. The breadth of discounting by Australian book retailers means that it’s possible to buy most titles at significantly below the RRP. The Discount Stores sell all books stocked at less than RRP (Big W sells its backlist at RRP <35% and routinely reduces new books by 20%, for example).

The 2007 figures from AC Nielsen’s BookScan support this view. The 5000 top-selling books for that year created total volume sales of 33,495,126. If these had been sold at RRP, the total value would have been \$812,535,321. Compare this to the actual total purchase value of \$630,852,359 and it’s evident that discounting of books is alive and well in Australia.

The only thing illustrated by the preceding paragraph is that it would be a mistake, when conducting an enquiry into current prices, to predicate conclusions based on recommended retail prices. If the price of books is central to this debate, then surely a thorough investigation of prices on overseas open markets, such as Europe, needs first to be undertaken. We do, however, make the following comments on price:

Whether or not it would be cheaper to buy books from overseas depends to a large extent on the prevailing exchange rates, hardly a sound basis for major change.

If books could be landed here more cheaply by retailers, we doubt whether savings would be passed on to the consumer.

The recent article by Bob Carr (‘The Forum’, Weekend Australian 13-14 December 2008) in which he advocated the cessation of territorial copyright on the grounds that this would lower book prices, is instructive in its naiveté. Carr uses the recent Man Booker-winning novel *The White Tiger* as his example, triumphantly comparing the Australian RRP of \$32.95 with the US retail of US \$14.00 (or \$A 20.00 at today’s conversion rate of 70c). He fails to:

- a. Add GST to the overseas price
- b. Add freight costs
- c. Understand that books bought from overseas suppliers are firm sale, whereas most books bought from local suppliers are sale or return.
- d. Use the AC Nielsen average selling price of *The White Tiger*: \$31.58 vs. the RRP of \$32.95. A 1-minute search while writing this showed that this writer could purchase *The White Tiger* for A\$28.95 from a local online bookseller or for \$21.41 at any Big W store.
- e. Notice that Australian booksellers are currently marking up the US price of imported books by a factor of 2.2, which would give an Australian selling price of *The White Tiger* of around \$31.

A recent example featuring Dymocks, on whose board Carr sits, runs as follows:

Penguin Australia publish a book called *The Stone Key*, by noted local fantasy writer Isobelle Carmody. It's a fat book at 1000 pages and is now in its paperback 'A' format edition with an RRP of \$22.95, although AC Nielsen shows an average selling price of \$19.75.

We sold US rights to Random House, who decided, because of its size, to publish in two volumes. The first of these volumes – also in 'A' format was imported (illegally) by Dymocks in Camberwell, Victoria. It's a 466 – pager with a US price of \$6.99. Dymocks were selling it here for \$22.99. That's half a book at a higher price than the complete work.

New releases are regularly reduced by Angus & Robertson, Borders and Dymocks. Loyalty schemes operate in major Chains and Independents. It's a highly competitive environment and price is constantly used as a weapon. The Australian bookbuyer enjoys a wide range of titles at competitive prices, and the Independent booksellers provides her with high service levels, as does the online bookselling community.

WHAT WOULD HAPPEN?

With the likely closure of some Independents, consumers would suffer some loss of immediate range of imported titles and service loss, but otherwise their lives would by and large remain unchanged. We do not predict any drop in prices.

HOW WOULD THE FEDERAL GOVERNMENT BE AFFECTED BY THE REMOVAL OF TERRITORIAL COPYRIGHT?

We predict the following:

A rise in unemployment in various sectors of the industry caused by the drop in local sales of imported books would diminish taxation revenue and increase pressure on Social Services.

These sectors would be:

Distribution/publishing companies: Reductions in numbers of sales, publicity and warehouse staff.

Printers: With the likely closure of at least one major printer, this is probably the most affected area.

Booksellers: Some closures as reductions in local stockholding and decreased publicity slow book sales and push more consumers onto the internet.

We also believe that the government should be concerned about the rise in importation vs local printing which would flow from the removal of territorial copyright. With the book industry quite rightly trying to reduce the number of "book miles" created in order to reduce the size of its carbon footprint, we would like to think the government shares our aspirations.

We make no comment on the effect a change in legislation would have on overseas authors or their agents.

SECTION TWO: LOCAL PUBLISHING

INTRODUCTION

The last 20 years have seen the flowering of a strong and vibrant Australian publishing industry. We know that more than half the books sold in this country are published locally and that the huge majority of these are written by Australians. To support this flourishing part of our industry, we have developed the large workforce necessary to take Australian books to the consumer. Publishers and editors, production staff and designers, sales and publicity teams and their army of supports in administration, finance, HR, IT and distribution are all required to make the publishing industry function.

Australian writers and publishers are now competing on the international stage. Authors such as Mem Fox, Richard Flanagan, Tim Flannery, Monica McInerney and Tim Winton are known and respected worldwide. Whether or not the Commission is convinced that it is *ipso facto* a good thing to export our culture and our ideas in this way, we shall see that the removal of territorial copyright would have a negative effect on our ability to continue to do so.

We are aware that many of the submissions received by the Commission will concentrate far more on this area (local publishing) than on the effect a change in legislation might have on imported books. Authors, agents and independent publishers, most of them uninvolved in importing and/or distributing overseas will, we assume, focus for the most part (or entirely) on the need for territorial copyright to continue to provide the level playing field necessary for their continued success. And while we will be supporting these views, we urge the Commission to take into account the job losses, reduction in promotional activity, decreased sales and the environmental issues which the removal of territorial copyright would have on the business of bringing overseas-originated books to the Australian consumer.

Australian publishing houses create books and revenue by

- a. Publishing Australian books by local authors.
- b. Buying rights in overseas titles (as opposed to importing stock from northern hemisphere partners and marketing and distributing them).
- c. Selling rights of the books they publish to other publishers, usually in the northern hemisphere. The US and UK are the two principal purchasers of such rights.

WHAT WOULD HAPPEN TO THE LARGER LOCAL PUBLISHERS IF TERRITORIAL COPYRIGHT WERE ABOLISHED?

In an open market, it's our contention that the publication of books by local authors would continue in the large publishing houses such as Penguin, Random House and Harper Collins, although there would be some defections by local authors to publishers in the northern hemisphere (see p.9 para.6). It is in the buying and selling of rights, however, where the problems begin.

This trading in rights represents a valuable income stream to the bigger houses. Spotting books from overseas and often re-editing and re-designing them for the Australian consumer does much to enrich monthly offerings to booksellers and to the public. And selling overseas rights enhances incomes of authors, agents and publishers while enhancing Australia's standing abroad and lowering the trade deficit. Trade in rights is A Good Thing for the bigger publishers.

For the small-to-medium Australian publisher, however, trade in rights is not just A Good Thing: it's vital to their survival.

WHAT WOULD HAPPEN TO THE SMALLER LOCAL PUBLISHER IF TERRITORIAL COPYRIGHT WERE ABOLISHED?

It's here the Commission needs to decide whether the survival of companies such as Scribe, Text, Giramondo, Black Inc., UQP and FAP and others is important enough to render all other arguments redundant. For such is their level of rights trading that if territorial copyright were removed, and the value of copyrights either bought or sold were thus severely reduced, that many of them would either cease to exist at worst, or at best survive in a crippled form.

The revenue made from rights trading by these companies allows them to invest in the development of Australian authors, to hire and train editors and publicity staff, to contribute mightily to the country's culture.

Currently, trading in rights is mostly a triangular affair: the US, the UK and Australia buy and sell rights to each other. The US has its own territorial copyright. So does the UK. So do we. Remove ours, and trading in rights will all but stop. The existence of territorial copyright has allowed us to develop a vigorous, competitive industry with benefits to all parties and it seems frankly odd to us that anyone should even countenance some tinkering, let alone complete dismemberment.

WHAT WOULD HAPPEN TO AUSTRALIAN AUTHORS IF TERRITORIAL COPYRIGHT WERE ABOLISHED?

The news is all bad. We contend:

In an open market, the sale of rights to overseas publishers causes immediate problems. If Australian-originated books come back into this market to compete with local editions, authors would receive what is called an "export royalty" from the overseas publisher. This is typically 10% of net receipts; less than half the royalty they'd receive from the sale of local editions, from which authors usually receive 10-12.5% of the Australian RRP.

Worse, if remaindered overseas editions were able to enter this market, the authors would receive nothing.

Australian publishers (or the authors via their agents, who sometimes give publishers local rights only in order to on-sell overseas rights themselves) would then be faced with a choice. Do they sell the rights to overseas publishers, given the problems mentioned above? Or do they simply not sell overseas rights at all? In either case, the author is the biggest loser. Whether rights sales are accomplished by publisher, author or agent, the ability to trade in these rights is compromised once sales in the biggest market for these books – Australia – are threatened by imports. In the face of this, Australian authors may well choose to be published initially in the UK or the US, rather than locally, to ensure that their books are available in northern hemisphere markets. If this were the case it would create further pressure on job numbers in the areas of editorial, production, design and printing.

The contraction of the smaller publishers caused by the shrinkage of rights trading could only be disadvantageous to Australian authors, particularly those attempting to be published for the first time. Any diminution in the number of Australian publishing houses can only mean less choice for authors and agents, less speculative publishing and fewer new authors entering the market.

WHAT EFFECT WOULD THE DISMANTLING OF TERRITORIAL COPYRIGHT HAVE ON AUSTRALIAN DISTRIBUTORS?

As mentioned previously, there has been a rationalisation of book distribution in Australia over the past few years, with the bulk of books now warehoused in a handful of distribution centres. To make economic sense, these warehouses require large throughput against which to amortise their fixed costs and this is typically achieved by the distribution of books published by other, smaller companies, as well as those of their own.

Pearson Australia (Penguin's parent company) is a good example. Its distribution centre – United Book Distributors – carries books from Penguin and Pearson Education, but also for local clients in New Holland, Allen & Unwin, Text, Scribe, Working Title Press, Fremantle Arts Press, University of Queensland Press, Black Inc., Hay House and (soon) Simon & Schuster.

Many of these clients would either disappear or shrink considerably, thus lowering throughput with concomitant rise in distribution costs and job losses, while making a nonsense of the investment in warehouse infrastructure made in recent years.

AND PRINTERS?

To state the obvious, any reduction of local publishing means a reduction in local printing. We also observe that the reprinting of backlist titles would decrease should imports be able to enter the market.

AND BOOKSELLERS?

It's our view that there's a very real possibility of large quantities of US remainders of Australia books entering our market should territorial copyright be abolished.

The retailers most likely to purchase these would be those with large numbers of outlets: the Woolworths and Wesfarmers groups. The smaller retailers, particularly the Independents, would suffer as a result.

SECTION 3: SUMMARY

It is our firm belief that the Australian book industry can continue to flourish only if territorial copyright is maintained. We contend that its abolition would mean:

Large international publishers advantaged over the smaller independents

Mass-market retailers such as Woolworths eroding market share of independent booksellers

Fewer books being published locally

Fewer books being imported and promoted

A dumbing-down of our culture

Job losses in distribution centres, publishing houses and printers

A sharp decline in international rights trading

The shrinking of independent publishers

Loss of income for local authors

A negative impact on our balance of trade as the number of imported volumes rises and the sale of rights shrinks.

If the government wishes to engineer a situation in which larger publisher and retailers thrive at the expense of the small, in which creativity is stifled and writers and editors can no longer be nourished, the abolition of territorial copyright is the way to achieve it.

Nor do we favour industry subsidies as a form of compensatory behaviour: from our standpoint this looks like applying a band-aid to a wound deliberately inflicted on a healthy organism. What we need is to continue to be able to compete with the rest of the world under similar rules to the ones under which they operate. We repeat: territorial copyright operates in the US and the UK, and to remove it from Australia is to send us into the ring with our hands tied behind our back.

We endorse the current Copyright Act, which provides a solid platform for continued industry growth while ensuring the consumer enjoys competitive prices, wide availability of books, and high service levels. Perhaps the 90-day rule on already – published titles could be looked at and we would welcome further discussion around it, but the essence of the current Act is, we believe, in the best interests of all parties.

What we cannot support is the removal of territorial copyright as it is our firm view that it will turn a thriving industry into a shadow of its current self.