

**Submission to the Productivity Commission**  
**Copyright Restrictions on the Parallel Importation of Books**

**About Allen & Unwin**

Allen and Unwin is Australia's largest independent Australian owned publisher. The company was established in 1976 as the subsidiary of a UK company, with the twin aims of building an Australian list and importing overseas titles. In 1990 the parent company was acquired by HarperCollins, and the Australian company became independent through an MBO by the Australian directors, who remain sole owners today.

Over the last nineteen years the company has grown steadily and has achieved a reputation for publishing quality and commercial success. In eight of the last fifteen years we have been voted Publisher of the Year by the industry, and our joint venture book distribution business, ADS, has been voted Distributor of the Year seven times since its establishment in 1999.

Our output of new local titles has been between 225 and 250 per annum over recent years, covering the whole gamut from fiction and children's books to academic and non fiction books. Around 85% of these books are written by Australian authors with the remaining 15% being books to which we buy rights from overseas publishers and agents. Our titles have been consistent prize winners across all categories. An equivalent amount of our business comes from our representation of leading overseas publishers including Bloomsbury, Faber, Granta and Profile for whom we publish in excess of 1500 titles per annum.

Our annual turnover is between \$60 and \$70 million. We have an in-print total of approximately 2000 Australian titles, and hold stock of over 5000 titles from our overseas partners. The average value of the stock held in our warehouse at any one time is approximately \$10.5 million. Our advances to authors total \$4.5m. We employ 125 staff, with offices in the major Australian capital cities, New Zealand and the UK. We contract the services of many professionals to support our business – editors, designers, illustrators, translators, indexers, proofreaders, typesetters and printers.

**Benefits of the Current Australian Copyright Provisions**

The current strength of the Australian book industry is testament to the stability and certainty provided by the existing territorial copyright arrangements. With industry sales growing each year (8.9% in 2007; 2% in 2008), with over 10 000 people employed either directly or indirectly by the industry, with annual export sales of over \$200 million, the industry stands strongly on its own two feet.

The certainty provided by the Copyright Act, coupled with the incentive to operate efficiently embedded in the 1991 parallel importation provisions, have led to a situation where benefits are derived for consumers, authors, booksellers, printers and publishers. As well as this Australia derives a cultural benefit from the publication of close to 14 000 Australian authored books every year – books that help Australians understand themselves and their country better.

The existing copyright arrangements are the key to the significant growth of the industry over the last twenty years. Without the certainty provided by the existing legislation, investment in the industry would be smaller, authors' incomes lower and the diversity of books available to consumers much reduced.

### *Benefits to Allen & Unwin*

Since becoming an independent publisher in 1990 Allen & Unwin has grown nearly seven-fold. This growth would not have been possible without both territorial copyright and the 30/90 day rules as these factors have given Allen & Unwin the surety to invest in authors, in staff, in printing, in stock and in the whole sales, marketing and publicity structure which is necessary in today's competitive business environment.

Allen & Unwin's business model combines its own Australian publishing with vigorous buying and selling of rights as well as Australian representation of books from international publishers. These three elements of the business support each other but as an independent company we would be unable to operate any one element of this business model at the scale we currently do without the confidence provided by existing copyright arrangements.

Book publishing is an investment business, with publishers investing in authors' content in the hope of selling that content to consumers. The risks are high, many books sell in low numbers and many are unprofitable. Despite the risks Allen & Unwin has continued to grow and invest in both established and new authors as it plans both for today and the future. Our advances to authors total \$4.5 million. Our investment in new staff has led to the creation of over 25 jobs over the last five years.

### *Benefits to Consumers*

Existing laws allow consumers to import any book for themselves into Australia. There are no legal restrictions to the range of books an Australian consumer can access.

As well the 30 day rule has provided substantial benefits to consumers by making available affordable editions of books simultaneously with, or soon after, the first overseas publication. For example, Allen & Unwin published bestselling crime writer Michael Connelly's new novel *The Brass Verdict* in October 2008 at \$32.95 in trade paperback. Due to discounting by retailers the average selling price to consumers to date of this book across all retail outlets has been \$23.05.\* The US and UK editions of this book were published in exactly the same week in hardback at A\$42.30 and A\$44.40 respectively.\*\* This price competitiveness is further enhanced when gst is considered. The Australian price is inclusive of 10% gst the US and UK editions have no gst component.

This is not an isolated example. The majority of bestselling international books published by Allen & Unwin are published in Australia simultaneously with the overseas editions, in trade paperback formats, and at prices below the US and UK editions of the book. All Australian publishers routinely follow this practice as a consequence of Australia's innovative 30 day rule.

Consumers also benefit from the breadth of titles that are available in Australian bookstores. Titles from all English language countries mix with Australian titles on bookstore shelves as the existing copyright laws have allowed publishers both to confidently hold stock of imported titles as well as to expand their publication of Australian titles. Allen & Unwin has published over 8000 Australian books in the last 20 years whilst stocking over 40 000 imported titles for consumers to purchase.

### *Benefits to Authors*

Authors benefit from the existing copyright arrangements as it provides them with a geographic territory for which they can sell the copyright to their work. Without territorial copyright for Australian writers, publishers will be unable to place an appropriate value on the right to publish an author's book in Australia and so authors' incomes will reduce. This is further exacerbated by the possibility of unsold copies of authors' books being sold into Australia from overseas markets. This reduces authors' incomes by replacing full-royalty Australian sales with no-royalty sales of the remaindered overseas edition. Presently over 1000 authors receive advances and royalty payments from Allen & Unwin annually. Any change to the copyright situation for Australian writers would contrast sharply with that of writers from Canada, the UK and US who all receive the benefits of territorial copyright.

Maintaining territorial copyright also ensures publishers and authors can maximise their ability to trade rights, since rights trading relies on reciprocal relationships where publishers buy Australian rights for overseas books and also sell rights to overseas publishers for Australian books. Allen & Unwin earns between \$3 and \$4 million in this way each year in rights income for its authors. If we were unable to buy rights to overseas books without the concerns of parallel importation then not only would we reduce our buying of overseas books but our ability to sell rights for our Australian books would also diminish. Authors' incomes would further reduce.

### *Benefits to Booksellers*

As with consumers, existing laws allow booksellers to import any book into Australia for their customer. There are no legal restrictions to the range of books an Australian bookseller can access.

Booksellers have benefited strongly from the 30 day rule as it has led to them selling well-priced editions of books simultaneously with, or soon after, their first overseas publication. The increasing sales and good health of the industry over the last twenty years is strongly related to the availability of these trade paperback editions in Australian bookstores.

Collaboration between booksellers and publishers is very strong, as both parties work together in recognition of their mutual goal. Having purchased the right to publish a book in Australia, publishers collectively spend tens of millions of dollars each year generating demand for these books through author tours, writers festivals and publicity and marketing campaigns. Allen & Unwin spends over \$2 million annually to create demand for its books by touring authors throughout Australia, bringing authors to Writers Festivals, and creating publicity, marketing and advertising campaigns that alert consumers to the existence of the books. Booksellers and publishers collaborate on co-operative advertising campaigns to produce retail book catalogues that are distributed to consumers.

These activities are central to much of the industry's success and have been developed in an environment whereby territorial copyright provides certainty for publishers and booksellers to invest in creating demand for books. Much of this demand creation and collaboration would vanish should parallel importation of books be allowed, as the uncertainty over who would benefit most from the marketing and promotional activity would create a disincentive for investment.

### *Benefits to Printers*

The 30 day rule has been a godsend for Australian printers. Since publishers need to publish overseas books simultaneously with, or soon after, their first overseas publication the only feasible way to do this is by printing the book with an Australian printer. The extra cost that can be incurred in doing this is offset by the maintenance of territorial copyright and the absence of airfreight costs.

Allen & Unwin spends over \$8 million annually with Australian printers. Should parallel importation laws change then there would be no need to print books with Australian printers to maintain territorial copyright. With reduced business flowing to them it is likely that Australian printers would need to increase their prices to maintain the viability of their business. This would have the inevitable effect of increasing book prices for consumers.

### **Consequences of Removing Restrictions on Parallel Importation of Books**

The current successful state of the Australian book industry is undeniable. That almost all of the participants in the industry trace much of the reason for this good health to the current sensible balance achieved by the copyright laws is clear. Most participants see the existing benefits far outweighing any costs for the Australian community.

It is easy to generalize about the consequences of removing restrictions. However some things do seem certain both for the industry and community generally and for Allen & Unwin in particular.

Australia would be the only major English speaking market to allow parallel importation of books. As the issues paper noted this is seen by many as surrendering the Australian market whilst extracting no tangible benefit in return.

Australian publishers would see a reduction in their sales revenue as overseas copyright holders captured some of the sales revenue of Australian consumers. With such a situation the likelihood of Australian publishers needing to increase the prices of their Australian books to maintain the viability of their businesses is high.

Australian authors would find it more difficult to be published since the publishing risk attached to investing in their book would have increased. This is due not only to parallel importation per se but also due to the threat from excess stock of their overseas editions being 'dumped' into Australia. As others have noted, authors almost always need to be successful in their home market before overseas publishers will buy the rights to their books. So authors would find it more difficult to sell their books both inside and outside Australia.

There would be less marketing and promotion (demand creation) of authors by Australian publishers since they would be uncertain of who would capture the benefit of this activity. So consumers would be exposed to a narrower range of books and authors through the media, writers' festivals and bookshops.

Nearly all of the above outcomes would impact negatively on Australian consumers. It is difficult to see how the removal of parallel importation restrictions could provide an overall benefit to consumers or the industry.

### ***Consequences for Allen & Unwin***

As an independent Australian publisher Allen & Unwin's entire operation relies on the business model it has developed in the existing Australian copyright environment. Unlike multinational publishers who operate subsidiary operations in other markets, Allen & Unwin does not operate subsidiary operations in overseas countries that would shield it from any changes in Australia. Should the copyright environment change then Allen & Unwin would need to alter its methods of operation.

Allen & Unwin's sales revenue would reduce without territorial copyright since overseas editions of books would be available for sale in Australia having been supplied by international wholesalers. Unless consumer demand for individual books increases as a consequence of multiple editions being available for sale, then it is inevitable that Allen & Unwin's overall sales will diminish. With lower sales, employment numbers at Allen & Unwin would need to be reviewed.

Allen & Unwin would reduce its publishing output of 250 new books annually due to the uncertainty surrounding the investment decisions in authors. Over time some authors' books and sales would be unaffected by parallel importation whilst others would be significantly affected. However it will be difficult to foresee this and so fewer books will be published in an attempt to mitigate this risk.

The risk profiles of the types of books we publish will come more strongly into focus since we will be in an environment whereby the overall risk in our business will have increased. We will need to reduce our risk on individual titles to counter the increased overall business risk. This will lead to a reduction in publishing of higher risk books – in particular first and second novels by unknown or lesser known authors, and non-fiction books on unproven topics.

Allen & Unwin's childrens' publishing would reduce in size as all children's publishing programs already operate in a highly challenging environment. Children's books are published into relatively small markets, with smaller print runs and lower retail prices than adult books, but require similar overhead costs to produce. As such, despite the fact that children's publishing plays a crucial role in encouraging and improving children's literacy and language skills, it would be necessary to reduce the business risk in this area to ensure the viability of the overall publishing program.

### **Specific Questions Raised by the Productivity Commission**

The above information provides evidence to support Allen & Unwin's views on why the current restrictions should be retained as well as suggesting how these arguments should be weighted against the arguments for removing restrictions.

To address specifically some of the questions raised in the issues paper:

**...to what extent is it important for Australian authors to have access to an Australian publisher in order to develop and promote their works? To what extent is access to an Australian publisher more important for a debut author than one with a track record?**

As mentioned earlier it is a truism in the industry that authors almost always need to be successful in their home market before overseas publishers will buy rights to their books. Every publisher in Australia, and overseas, would have numerous examples of this.

Similarly it is true that an author with a track record has increased bargaining power with both Australian and international publishers in comparison to a debut author. However despite it being more important for a debut author to have access to an Australian publisher *in comparison to* an established author, it is also clearly important for an established author to have access to an Australian publisher so that their work can be maximized in their home market which is usually, though not always, the source of their largest sales and income.

**How well developed is the trade in rights to literary works both in Australian and overseas markets? How important is this trade to Australian authors and publishers?**

Export sales of Australian books total over \$200 million annually. As well publishers and authors sell rights to their works so that Australian authors are published in every country around the globe. Allen & Unwin earns between \$3 and \$4 million in rights income for its authors each year, which means that across the industry many millions of dollars are earned annually in rights income for Australian authors. It is clearly a well developed and important part of the publishing business.

**.... have recent technological changes – for example the availability of online purchasing, ebooks or printing-on-demand - materially changed the industry and the ways in which copyright issues should be addressed?**

The industry is expending significant time and money on studying technological changes that are impacting it, in particular the digitization of book content. Its aim is to utilize the technological changes in ways that continue to allow the written work of authors to thrive.

None of these technological changes require copyright issues to be addressed presently, particularly because the final result of all of these changes is currently unclear.

In particular the availability of online purchasing cannot be viewed as a technological change affecting the publishing industry. This is a social phenomenon affecting the way that consumers shop. It is occurring in all facets of social life and many facets of retailing. Certainly the current inequity that exists whereby books bought online from overseas retailers do not incur gst is one that Allen & Unwin feels should be addressed immediately. However the phenomenon of online purchasing bears no relation to copyright issues.

**What is the precise nature of the cultural benefits arising from books?**

The issues paper acknowledges the strongly-held view that the existing arrangements generate cultural benefits for Australians. To harness evidence to support this seems an indefinable task. Allen & Unwin takes the view that books written by Australian authors, on Australian topics and through Australian eyes are of immense benefit to Australian readers.

People want to understand themselves better and their families, communities, society and country. To do this they need to read their own stories told by their own compatriots. Books of all types are needed but a country's culture cannot be fully formed by others.

**Does or could (additional) government arts funding achieve similar outcomes, or serve as an alternative, to the current parallel import restrictions?**

The Australian book industry is a clear success story with more than 60% of the books bought by Australians being Australian books. The contrast with the film industry, where 5% of the box office is for Australian films, and the music industry, where 10% of music bought is by Australian artists, couldn't be more stark.

It is difficult to envisage why such a commercially successful marketplace requires intervention and indeed how such intervention could achieve similar levels of success.

## **What happened, and what are the lessons, from reforms to parallel importation rules for other copyright goods in Australia and from New Zealand's experience in relation to books?**

Allen & Unwin has no evidence to allow it to comment on changes to parallel importation rules for other copyright goods in Australia. However we operate a publishing business in New Zealand and have seen clear evidence of the negative impact that the removal of restrictions has had there.

The New Zealand industry today is characterized by little market growth and reduced investment in publishing infrastructure and local authors, particularly unknown and lesser known authors. As others have noted, New Zealand book prices are similar to Australian book prices, despite the removal of parallel importation restrictions there. That lower prices have not emerged in New Zealand brings into question the validity of the claim that lower prices would result in Australia should restrictions be lifted.

The New Zealand book market today relies heavily on the Australian market for the supply of bestselling international books simultaneously with, or soon after, the first overseas publication. Without this support from Australian companies the New Zealand market would face even more difficulties than it currently faces.

### **International price comparisons**

As the issues paper noted there are many difficulties in comparing book prices across markets. Certainly it seems that one of the key arguments for removing restrictions, that book prices will be lower in Australia, is a theoretical argument and is not supported by evidence. As previously noted, the New Zealand experience does not support this contention.

Presently consumers are able to have total and unrestricted access to any less expensive books overseas through online purchasing. As well the Australian retail market provides them with the ability to purchase books at deeply discounted prices due to the wide variety of retail channels that sell books in Australia.

It is difficult to see a causal relationship between parallel importation restrictions and book prices in the Australian industry. Numerous factors contribute to Australian book prices and local consumers are able to purchase books at a wide variety of prices.

### **What statistical or other evidence is there to suggest that availability is or is not a problem in Australia today?**

As noted, existing Australian copyright laws allow consumers to import any book into Australia. Similarly these laws allow booksellers to import any book into Australia for their customer. At no time therefore is an Australian consumer unable to access any book that is available for sale in an overseas country.

Coupled with this, the 30 day rule has led to most bestselling overseas books being put on sale in Australia simultaneously with, or soon after, the overseas edition. In these situations there is clearly no availability problem.

Many tens of thousand of books each year are not published in Australia within 30 days of overseas publication. Australian booksellers, by and large, choose not to import these books. This suggests that from the consumers' perspective there is no problem with the availability of these books in Australian bookstores.

## **Summary**

The Australian book industry is a clear success story. Industry sales grow each year, as do export and rights sales and employment numbers. Australian consumers choose to buy more Australian books than overseas books. Australian stories, and Australian perspectives, matter to people.

The industry has established a track record of success. It provides livelihoods for tens of thousands of Australian people. Much of this success has its foundations in the stability and certainty provided by the existing territorial copyright arrangements.

These arrangements have encouraged extensive investment in a risky industry. They have allowed authors' work to be supported and nurtured over time. Benefits from the existing copyright arrangements have flowed to the entire Australian community – to consumers, authors, booksellers, printers and publishers.

Any benefits from changing the existing arrangements seem small; the costs much higher. The industry is flourishing and will continue to prosper whilst supported by the existing Australian copyright legislation.

\* Source – Nielsen Bookscan

\*\* Exchange rates as at 12/11/2008