

## Queensland Writers Centre

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

January 2009

#### Introduction

- Queensland Writers Centre (QWC) supports the retention of current copyright restrictions on the parallel importation of books into Australia.
- QWC does not agree there is evidence that removal of the restrictions will lead to lower book prices or significant advantage to Australian consumers.
- The market risk and negative impacts on Australian authors, publishers, booksellers and printers that would result from removing the restrictions outweighs uncertain price improvements.

#### Prices of books in Australia

##### *Will removing parallel import restrictions lead to lower book prices?*

It is not certain that removing parallel importation restrictions would result in cheaper books. There are several factors that determine the local price of books. In addition to the Recommended Retail Price (RRP), these include:

- Goods and Services Tax (GST)
- Foreign Exchange Rates
- Cost of freight
- Terms of Trade (Importing a book from a foreign distributor may only be possible on a firm sale basis, not sale or return as is the common practice in Australia. Booksellers may account for this additional market risk in their pricing).

Foreign-based internet retailers, such as Amazon, already have a market advantage because the Australian government does not levy GST on Australian book purchases from them, yet does apply GST to Australian booksellers.

Price comparisons with books in overseas markets are problematic. The UK does not apply consumption tax (VAT) to books and in the US sales taxes vary from state to state. Furthermore, different publishing markets have different sizes and formats which affect the cost of production and hence RRP. There is no standard book format with which to compare prices from one geographical market to another.

Even if US or UK book prices are cheaper when formats and taxes are accounted for, the additional costs of GST, currency rates, freight and terms of trade, would likely keep local book prices substantially higher.

Even if book prices are reduced, however, the economic impact on authors would be calamitous.

### *What alternative solutions could lower book prices?*

The Australian Government currently collects GST from Australian booksellers but not from overseas-based internet retailers. This immediately adds 10% to the retail price of local books and also creates a market advantage for foreign booksellers. If the Australian Government is serious about making books cheaper for consumers, then exempting books from GST would be a swift and effective method that doesn't penalise authors or local book retailers. Alternatively, QWC would at least expect the Australian Government to apply the same tax levies to internet retailers to even the playing field for local businesses.

## **Impact on authors**

It is QWC's view that authors would be economically disadvantaged by the removal of parallel importation restrictions.

### *How will authors' incomes be affected?*

Foreign editions of Australian authors' books may return smaller or even no royalties to the authors. Removal of parallel importation restrictions would force local publishers to improve their terms of trade with booksellers in order to compete. The only way for publishers to preserve their profit margin would be to find efficiencies in the cost of production and distribution, including the size of author advances and royalty percentages.

Publishing is already a low margin enterprise. It is unlikely authors' advances will increase at the front end of the supply chain to compensate for reduced royalties at the back end. In fact, authors would see an erosion of their incomes from publishers over time.

To put this in context, an 'average' book advance for a first novel in Australia ranges from \$2000 - \$5000, with royalties of 10% of RRP once sales of the book have earned back the value of the original advance. Any reduction in either RRP or advances would be a significant economic disadvantage to authors, whose median income in Australia is just \$11,700 per annum.<sup>1</sup>

### *But won't lower book prices mean more sales volume for authors and publishers?*

The Australian book industry suffers from a lack of economic data, and this includes any historical analysis of the price elasticity of demand. A simple economic model would suggest that lower prices lead to higher sales volume. That's not a limitless effect in the market, however, and decaying economic conditions are actually more likely to make demand for books *less elastic* in response to price changes.

Australia already punches above its weight in book sales per capita. Heading into a tighter economic environment and labour market, it is questionable whether people really are going to start buying a lot more books if prices come down by a few dollars a title. Despite this, the impact on authors will be a net reduction in their income from book sales.

### *Can't authors and publishers limit these disadvantages through contracts?*

In theory, authors and their literary agents can demand contractual obligations from their publishers including the advance, royalty and circumstances in which the book may be distributed and sold. Publishers can do the same with distributors and foreign publishers.

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<sup>1</sup> Throsby, D. and Hollister, V. (2003). *Don't Give Up Your Day Job*, Australia Council for the Arts, Sydney.

The reality, however, is that all but a tiny number of blockbuster authors lack the market power to negotiate more favourable terms. Market power does not always rest with publishers either. Large booksellers with considerable market share are already able to demand very high concessions and discounts from publishers, such as internet retailer Amazon, or in Australia, the large discount retailers such as Kmart and Big W.

Removal of parallel importation restrictions would actually increase these retailers' leverage in the market over Australian publishers and even independent booksellers. Discount retailers commonly employ a loss-leader strategy on books in order to sell other high-margin goods. Removing import restrictions creates an added incentive for these retailers to distribute cheaper foreign editions and remaindered books. These are books which deliver lower, or even no, royalties to Australian authors, and are sold at a price which independent booksellers find impossible to compete against.

It's important to consider various impacts on different categories of booksellers, and not treat all book retailers in the market as the same. The Australian bookselling industry has one of the highest penetrations of independent ownership in the English-speaking world. Approximately 22%<sup>2</sup> of Australian booksellers are independents, and are small, low-margin businesses. While removal of parallel importation restrictions would likely benefit some booksellers, especially large national retail chains and discount department stores, they would have questionable benefit (and possibly significant detriment) for local high-street indie booksellers.

### *Doesn't this only impact a small number of authors who are published overseas?*

It would be easy to assume that the only Australian authors affected by reform of copyright territories and parallel imports are those who are actually published by foreign publishers. This would ignore, however, the broader impact on local publishers' consideration of market risk and their willingness to invest in new Australian literature.

If Australian publishers have to drastically cut their production costs in order to preserve profit margins, they will have less incentive to face the risk and investment required to publish new authors who are untested in the marketplace. Instead they will have an incentive to only publish an increasingly narrow range of blockbuster titles. Over time Australian writers will face higher and higher barriers to entry to the marketplace via trade publishers. The historical experience of New Zealand's book industry after parallel importation was allowed in the 1990s supports this.<sup>3</sup>

While technological advances mean authors can now affordably market their work by self-publishing, they lack the resources to market and distribute self-published titles for any kind of positive economic return, or even the recovery of costs.

## **Impact of changes to Copyright Law**

### *A level playing field?*

For analysis of international trade of books, this review should be restricted to English-language markets. It does not make sense to compare Australia with markets, such as Japan or Germany, where English is not the primary language. Where parallel imports are permitted in those countries,

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<sup>2</sup> Stager, F. in Dalton, T. (2008). The Courier Mail, 5 December 2008

<sup>3</sup> New Zealand Government (2004). *New Zealand Book Publishing: Industry Development Issues*, <http://www.nzte.govt.nz/section/13673/9618.aspx>

authors and publishers do not face significant competition from foreign publishers for native-language works.

The United States and the United Kingdom are two of the largest English-language book markets in the world. Both retain strict bans on parallel importation of books into their own countries. If Australia were to remove its own restrictions it would be at a trade disadvantage where UK and US publishers could freely export their titles to Australia, yet Australian publishers could not similarly compete in US and UK markets.

It is suggested any changes to Australian copyright law should be made in the appropriate multi-lateral trade forum, such as WTO TRIPS, where Australia can lobby for a level international playing field.

### *Isn't this just the same as the changes to the music industry 10 years ago?*

While it is tempting to treat all copyright industries the same, there are important differences between the music industry and the writing/publishing sector. Musicians tend to be signed to the same record company across multiple geographic markets. They do not licence rights to different companies to distribute music in various regions. Therefore Australian musicians and record companies are not affected by issues of territorial copyright because those companies are not going to undercut their own subsidiaries.

Comparatively, authors licence their books to different publishers in different geographic markets. Therefore, without parallel importation restrictions Australian publishers are at a disadvantage trying to sell to overseas markets while those countries still retain their own bans on parallel imports.

The music industry is also different in one other significant way. Music is now mostly distributed and sold digitally which allows independent record companies and individual musicians to remain competitive, because they compete in a market where cost of production and distribution is not a significant barrier. Conversely, the market penetration for digital books is currently only 1%. Without parallel import restrictions, independent publishers and small retailers will be priced out of the market by not having technological advantage or economies of scale.

This is an important distinction in this debate. Copyright industries depend on the trade of intellectual property. The discussion around parallel importation of books often treats, for example, a novel, and the paper on which it is printed, as one and the same. They are not. Authors sell intangible goods, which happen to be tied to the distribution of a physical medium. The cost and complexity of moving this physical medium between geographic markets is what makes Australian books expensive.

Australian music has survived the competition from parallel imports in the last decade because the market for music as content, is now entirely separate from the market for CDs. The same cannot be said of books (yet). Books are still dependent on their physical manifestation as printed matter to find a paying audience. The growth of the e-book market is well under way, but for many reasons is proceeding much more slowly and will eventually achieve less significance than its music cousin. Until consumer acceptance of e-books and digital book content rises to a level where books can easily find a paying audience without the barriers of production, distribution and marketing costs, Australian publishers and authors will always be at a disadvantage to foreign markets. It therefore makes little sense to removing parallel import restriction at the current time.

## About Queensland Writers Centre

Queensland Writers Centre (QWC) is a non-profit writing organisation with approximately 2,500 members. QWC's mission is to support and promote a writing culture in Queensland by contributing to the professional development and practice of writers locally, and by advancing their recognition nationally and internationally.