

## **Submission to Productivity Commission into Parallel Importation of Books, 2009**

### **From:**

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This submission to the Australian Government's Productivity Commission's Enquiry into Copyright Restrictions on the Parallel Importation of Books is written by Mark Rubbo and David Gaunt, directors, respectively, of Readings and Gleebooks. It is jointly written to reflect the shared experience and position of both businesses in relation to the history of parallel importation of books in Australia. It is structured to offer background information and specific responses, where the writers feel qualified, to various aspects of the Issues Paper.

### **BACKGROUND**

Readings is a Melbourne based independent bookseller with five shops, established in Carlton in 1969. Gleebooks is a Sydney based independent bookseller with three shops, established in 1975. The combined turnover of both businesses is \$28m, and staffing is in excess of 160. From small beginnings our shared history of growth is strongly related to two key aspects of the focus of this study: parallel importation, and the significant expansion of Australian publishing, both before and since the Copyright Amendment Act of 1991.

1. Parallel Importation: before the Copyright Act was amended, Readings and Gleebooks were frequently prepared to break the existing law, and import books (primarily, but not exclusively, from the USA) to satisfy customer demand which clearly was not being met by the closed market. We estimate that more than 20% of our turnover during the period of rapid growth before 1991 would have been for books purchased from overseas sources, principally US wholesalers.

2. Australian Publishing: we believe that the substantial growth in local publishing and the concomitant flowering of cultural life in print across all sectors has been integral to our growth as booksellers. Our own sales figures reflect significant increase in the volume and variety of books published here with all the benefits of a strong marketing campaign, printing, distribution and associated activities.

It is fair to say that the Amendments passed in 1991 were well overdue; the (then) closed market was an anachronism foisted on book retailers and the public. The changes to the law were preceded and succeeded by an intense scrutiny of the old and new legislation. Mark Rubbo was President (1988-1991) and a long term management committee member of the Australian Booksellers' Association (ABA) during this time, and David Gaunt was Convenor of the ABA's Copyright Committee from 1989 until 2001. In these roles both of us were heavily involved in the formulation of the ABA

submissions and presentations. The Amendments made in 1991 far more closely matched the ABA position than those approaches advocated by other parties, including publishers, other booksellers, and consumer advocacy groups. Importantly, the Amendments introduced a “use it or lose it” principle to the Australian book market, which has been the cornerstone of the exceptional growth in Australian publishing, printing and distribution since its legislation. Also, the special order provision was a welcome initiative to meet specific customer demand for particular editions.

We were aware from the outset that there were inherent weaknesses in the 1991 legislation. Availability of new releases of overseas published books in a timely fashion was clearly addressed by the 30 day rule, but the 7day/90 day rule for “backlist” or re-ordering was manifestly impractical and the Amendments implied rather than legislated pressure on price (although Australian publishers have responded positively with well-priced trade paperback editions of many new publications). The long-term impact of this is clear: a substantial increase in the volume and extent of local publishing. It is worth noting that more than 50% of the bestselling titles in 2007 and 2008 at both Readings and Gleebooks were books published in Australia. Likewise, the percentage of stock directly imported dropped from a pre 1991 20%+ to less than 10% for both businesses. This represents a win-win result for the Australian book industry and the consumers (as well as a positive environmental outcome), as well as an indication that, where local supply is efficient and price-competitive, booksellers will support it.

The 1991 legislation had a provision for review (by the Prices Surveillance Authority) of the effectiveness of the Amendments. The ABA submission went directly to the core issues: how to offer Australian publishers certainty for their investment, protect the interests of booksellers and consumers, and ensure that Australian obligations to all international treaties concerning copyright were met. To this end we submitted “the Australian Version”, (see page eight for outline and comments) with the specific intent of encouraging Australian publishing, as well as of removing the administrative burden of the 7 day/90 day rule. Simplification and certainty were combined with a more direct approach to identifying those publications with protection (only those with an Australian ISBN). We believed this rewarded Australian publishers who committed to serving our market, in the most effective “use it or lose it” way, at the same time as providing maximum flexibility for Australian booksellers to source books for their customers.

It is clear from subsequent enquiries into the question of copyright and distribution in the Australian book trade that, as might be expected, circumstances and factors which impact on the issues have changed significantly (eg. at the time of the 1995 PSA enquiry, the internet was in its infancy, e-books did not exist, and only a small percentage of overseas books were airfreighted into Australia). Our position, whether representing the ABA, or as individual booksellers, has always been based on the recognition of the inviolability of some form of territorial copyright. It seems clear to us from the history of this issue in the Australian book industry that a balance has always

been necessary between that recognition, and the essential need to serve the reading public with best practice in service and competitive pricing.

Insofar as we believe ourselves qualified to comment, we would make the following observations regarding the Issues Paper:

## **ISSUES PAPER**

### **Benefits of Closed Market**

The writers accept the argument that territorial copyright confers a number of benefits for authors, publishers, retailers and consumers.

1. Marketing support benefits authors by increasing their sales, consumers by making them aware of titles they may not have known about, publishers and distributors by giving them certainty, and retailers by creating demand and traffic.
2. Territorial copyright also enables certainty which in turn has encouraged the rapid growth of a sophisticated book industry. Publishers are able to employ or contract skilled employees in fields such as marketing, commissioning, production and editorial. The success of local authors has also given rise to a network of agents representing them. Extensive local printing underpinned by the impact of territorial copyright supports two large printing firms in Australia with the jobs and skills that generates.
3. Successful publishing and a reasonably predictable market supports a sophisticated and efficient distribution network that benefits both retailers and consumers.
4. Publishers and distributors provide support for book related events and activities, for Writers Festivals and the numerous articles and reviews published in Australia. Consumers and retailers benefit from these activities.

### **Disadvantages of Closed Market**

1. There could be periodic exchange rate benefits resulting in significantly lower prices. For example, last June when the Australian dollar was strong against the US dollar many overseas originated books were significantly more expensive in Australia.
2. Booksellers may be able to play off competing distributors and assess the comparative pricing between editions (although there are clearly extra costs involved in doing this and booksellers may not want to risk damaging long term business relationships with publishers and distributors by buying competing editions of their books.)
3. Booksellers control their own “destiny”

## **Workings of the Book Sector**

### **1. Australian Authors**

As mentioned, especially since the 1991 amendments, there has been a substantial growth in Australian publishing and concomitant growth in sales of works by Australian authors. The marketing efforts of Australian publishers we believe are essential to maximize sales. In our experience very few Australian authors do not have an Australian publisher, and those that do not, achieve lower sales. A whole range of factors contribute to this: for instance the Australian publisher has a vested interest – both financial and professional – to make a title work, and retailers often have close relationships with the publisher and author and are therefore inclined to make an extra effort to promote those books in their shops.

A useful case study is “The Great Fire, by expatriate Australian author Shirley Hazzard. It was published by Virago (a division of Little Brown UK) and distributed by Penguin in 2003. That title had desultory sales until it won the Miles Franklin Award in 2004. No one at Penguin had a vested interest in the title and little marketing money was expended on it; in fact Penguin did not submit it for the Miles Franklin Award – it was called in by the judges. Certainly, had “The Great Fire” been published exclusively in Australia by Penguin Australia, or by an independent Australian publisher such as Text or Allen and Unwin, the sales history of that title would have completely different.

### **2. Online**

The rise of the internet and internet retailers has been a major change in recent years. Many booksellers have seen significant sections of their business lost to internet retailers such as Amazon who are able to supply customers exclusive of GST. It has also meant that Australian consumers now have easy access to price comparisons.

### **3. E-books/Print on Demand**

It is too early for us to assess what impact these developments may or may not have. One might however speculate that in a completely open market all business to consumer transactions would be made by offshore retailers who would operate without GST constraints and, in the case of e-books, without shipping costs. We would submit however that a decision to change territorial copyright should not be based on such a speculative future.

## **High Level Objectives**

1. The Australian book industry in all its facets comprises Australia’s most successful cultural industry. It employs many thousands of people and is also a major exporter of cultural products. It is based on the right of the copyright owner to trade unencumbered in his or her intellectual property. It would seem to us that to potentially jeopardize such a successful industry for unknown results would be extremely reckless.

2. As retailers we sell both CDs and DVDs; sales of locally produced CDs and DVDs are minimal. This could in part be attributed to the market for CDs being completely open (diminished income and certainty) and DVDs being completely closed (complacency and little incentive).

## **Cultural Issues**

1. We have alluded earlier to the growth in Australian publishing since the 1991 amendments.

We reiterate that the changes in 1991 had very positive benefits:

Overseas originated books appeared here faster, often in cheaper, and distinctive, formats.

Distributors of overseas titles were empowered by the 1991 legislation to demand different terms from their overseas suppliers – this led to a greater feeling of ownership of individual titles and a sense of independence for the management within those companies.

A growth in acquisition of rights to overseas titles by Australian publishers and the maturity of Australia as copyright territory

The growth of a strong independent publishing sector in Australia

We believe that these effects would have been very unlikely to occur in a completely open market.

2. It is evident that for authors to build a market they need a significant financial commitment from their publishers and from retailers. As retailers we receive financial support from publishers to market their books, principally in the form of paid advertising in our newsletters and catalogues and by authors being made available for events and promotions at little cost to us. There is a clear community benefit through the exposure of authors and their works in this way.

3. We believe that there are many important Australian books that may not have been published (or at least not so effectively) without the benefit of the exclusivity conferred by the concept of Territorial Copyright.

4. Australian readers have demonstrated a distinct preference, unsurprisingly, for Australian themes. The increased market for Australian authored books means that Australian publishers may be able to give those authors better advances which in turn enable them to produce better books. Authors such as Chloe Hooper, Tim Winton, Tim Flannery, Kate Grenville, Henry Reynolds, Inga Clendinnen and Don Watson have all been published here first, very successfully, and overseas subsequently with varying degrees of success. The success of their works, whether viewed from a cultural or financial point, seems very unlikely, had they NOT first been published in Australia.

5. In comparison to other art forms such as opera or film, the book industry gets very little funding from the State. It is hard to see what kinds of assistance could be provided to mitigate the impact of removing the current parallel import restrictions other than direct subsidy to author, publisher and printer. Perhaps the removal of GST on books may be a suitable compensation.

### **Gauging Effects**

1. As mentioned previously the opening of the CD market appears to have had a detrimental effect on sales of CDs, although other factors such as the growth of legal and illegal downloads has also had an impact. CD prices in Australia appear to be largely equivalent to those overseas. According to ARIA domestic music accounts for approximately one-third of all acts which appear on the ARIA Charts; this is a considerably smaller proportion of Australian material than the equivalent book sales represented on Nielsen Bookscan.

2. We believe it would be very difficult to do an exact price comparison. By virtue of distance, imported books should be more expensive in this country than their home market. For us as importing booksellers, total freight and statutory costs (including customs clearance and various surcharges) are between 10-40% of the cost the book, depending on the size of the shipment. This means that our retail (GST exclusive) for books we import ourselves are 12.2-43% above the retail price (tax exclusive) in the originating country – assuming that we receive a trade discount of approximately 40% off the overseas list price (it is not unusual to receive less). Our experience is that generally the cost of a book supplied by an efficient distributor is cheaper than if we purchased the book from an overseas distributor. We are relatively large direct purchasers of overseas books and get some benefits of scale. For smaller businesses those cost structures would be higher. Currency fluctuations may, from time to time, distort this, as was the case in June 2008. We are not in a position to know the cost structures that pertain to book distributors and assume they have similar add on costs to our own. We do note that two distributors, Wiley and Simon and Schuster, roughly parity price their imported books. In the case of Wiley supply is good; in the case of Simon and Schuster supply is poor.

### **Availability**

1. As mentioned earlier the number of books we import directly now has fallen by more than 50% since the 1991 amendments. This would indicate that availability of titles has improved markedly– this partly due to the fact that Australian books make up a much larger share of the market and that many overseas originated books are now printed in Australia. Distributors of overseas books in Australia are more aware of the implications of their actions. The advent of internet databases such as Australia's Titlepage and US wholesaler Ingram's Ipage means that booksellers can check availability here and overseas instantly. Especially in the case of customer requests, availability and price comparisons can be done in seconds: typically on receipt

of a customer request we would check local availability on Titlepage and then, if the requested title is not in stock in Australia, check availability on Ipage or its equivalent, and, if available, then order that edition (assuming there is little price differential). We would argue that availability has improved markedly since the amendments. Some commentators cite the unavailability of particular esoteric titles as evidence of the failure of the amendments. In all instances that we have seen quoted, these titles had not met the 30 day rule and could have been imported by any bookseller.

2. We treat the 7/90 day rule as irrelevant – in the case of customer special orders, we would simply be losing business not to do so. In the case of a stock item, we would contact the distributor and request an ETA, if it was longer than 15 days we would seriously consider bringing in an alternative edition as we could have that in seven days. In this current environment 90 days is a ridiculous time to wait for resupply, especially as our customers are able to order from online retailers. We would argue that 7/90 day rule is cumbersome and costly to abide by; few booksellers would follow it except in a vague and imprecise manner. Having said that, we are not aware of any prosecutions or threats of prosecution for abuse of the 7/90 day rule. It would, however, be good to have legislation or regulations that reflect the reality of current circumstances.

## **Future Market Developments**

1. We believe that the diversity and viability of local publishing would grow, if territorial copyright were maintained. In addition, more Australian publishers would continue to buy Australian rights to overseas titles with the recognition of Australia as a mature and sophisticated book market. The viability and profitability of these sectors should increase, to enable further investment in infrastructure, authors and new titles. In the US and the UK the strength of their publishing house has been their ability both to originate their own titles and also to acquire exclusive right to titles developed in other markets. Readers in these markets have benefited by having access to a much wider range of titles.

We also believe that this would help maintain the diversity of retailers that Australia currently enjoys as different retail segments stock different ranges to serve diverse markets.

2 It is hard to gauge the implications of the emergence of e-books (if it happens). We would assume that sales would all be on line; in which case supply is instantaneous. Also there would be no justification for price differentials in different markets. As offshore etailers would be able to supply Australian consumers GST free, then they would have a considerable competitive advantage. It is also very difficult to see how territorial copyright could be maintained in a virtual environment.

As booksellers, we would like to be able to have some role in that market

3. In an open market, we doubt that we would source more books than we do now from overseas wholesalers unless the open market led to the breakdown

of the local distribution network. Booksellers would import remaindered titles by Australian authors as they would have the best market recognition and sales potential. Booksellers such as ourselves who would feel uncomfortable about importing remaindered Australian titles would have no choice in order to remain competitive.

We believe that, in an open market, publishing activity would diminish and therefore Australian authors would have less opportunity to gain publication.

## Reform Options

In 1995, in a submission to the Prices Surveillance Authority, the Australian Booksellers Association put forward the concept of the Australian version. The aim of this proposal was to introduce clarity and certainty to the 1991 amendments; at the time we felt the 30 day rule unclear and restrictive and the 7 day/90 day rule for backlist administratively cumbersome.

We felt that if an Australian publisher had a contractual arrangement with an author to publish in this country, then that arrangement should give exclusive rights over that work in Australia and that this could be exercised at any time. But until such an edition became available in the Australian market, then booksellers should be free to import any legal edition. The Australian edition would be clear and identifiable, with its own ISBN and listed in the major databases. In addition, in the case of a protected title being unavailable, that it was unnecessary to specify the time in which it needed to be supplied before a bookseller could order a competing edition.

## Features of the Australian Version

1. Copyright is established by the publication of an Australian edition of the work (*Australian version means a version a work or a published edition of a work published in Australia by the owner of the copyright in the work or in the published edition of the work pursuant to a contractual arrangement for the publication of copies of the version in Australia.*) Copyright may be established at any time.
2. Until publication of an Australian version, any legal edition of a work may be imported.
3. If the “Australian Version” of a title is unavailable for any reason, any legal edition may be imported until the “Australian Version” is available again.
4. A competing edition of the “Australian Version” may be imported at the request of a customer in a reasonable quantity (multiple copies may be imported for book clubs, libraries etc.)
5. A bookseller may in their catalogues or website list alternative editions; in the case of alternative editions of books with an “Australian Version”, these must not be stocked by a bookseller.



The above features would introduce clarity to the current legislation; closed market titles would be easily identified. Publishers would be able to “close the market” at any time if they enter a contractual arrangement with the author or his/her agent. The need for the 30/90 day rule is done away with. There is a real incentive for publishers to keep Australian booksellers informed about publishing programs, publish as close to original publishing date as possible, and to keep titles in stock. The ability to list alternative editions introduces some transparency to the way books are priced in this market.

We note that Canadian legislation from 1999 has some similar features. Elements of this may be applicable to the Australian market. Part of the Canadian legislation, as we understand it, specifies the permissible differential between the prices of books in their country of origin and their price in Canada. Given the changes in the market place since 1995, we would recommend a thorough examination of the Canadian legislation and regulations. It may well be that their application to the principles embodied in the “Australian version” could provide a practical solution to the future of parallel importation.

In conclusion, while our views have been represented as changing from an open market one to a closed market one, this is not the case. We have always believed that a closed market for titles published locally balances the interests of consumers on the one hand with those of publishers and authors on the other. We find the arguments of the proponents of an open market that prices will be significantly cheaper in an open market unconvincing.

Further, we would note that should some form of the 30 day rule or the 7 day/90 day rule be retained (certainly not our preference), then specifics of those features in the Canadian legislation (i.e. number of days, price differentials) be determined by regulation, not legislation.

We would welcome the opportunity to address positions raised in this submission in any appropriate forum.

Mark Rubbo (Readings) David Gaunt (Gleebooks), January 2009