

## Leading Edge Books Productivity Commission Submission – Parallel Importation of Books Study

**Organisation:** Leading Edge Books – a buying group of over 180 Australian independent booksellers

**Street/Postal Address:** Level 1, 3 Fitzsimons Lane, Gordon NSW 2072

**Principal Contact:** Chris Burgess, General Manager

**Phone:** 02 9497 4022    **Fax:** 02 8208 3274    **Mobile:** 0408 257 359

**Email:** burgessc@leadingedgegroup.com.au

### **Background**

Following the announcement of the Productivity Commission study into copyright restrictions on the parallel importation of books and given the relatively short time frame for submissions, it was felt necessary that Leading Edge Books member stores be given the opportunity to understand and discuss the issues with a range of representatives from all sides of the book industry.

Given that the legislation has historically been discussed only in isolation, i.e. booksellers discussing with other booksellers and publishers with other publishers and having, in our role as a buying group head office, seen gaps in understanding on both sides of the industry, it was felt that this was an ideal opportunity to redress this imbalance. No part of the industry operates in isolation from the others and an important structural element of the industry such as copyright legislation should be considered from as complete a viewpoint as possible in order to make a meaningful submission by Leading Edge Books or individual booksellers to the Commission. We had over 70 bookseller delegates attend three information evenings (in NSW, VIC and QLD) which was an excellent turnout given the time of year. Each meeting was also attended and addressed by a representative of a major international publisher, an Australian independent publisher, an author and booksellers had ample opportunity to present their views, ask questions and discuss the issues.

The primary goals of the meetings were as follows:

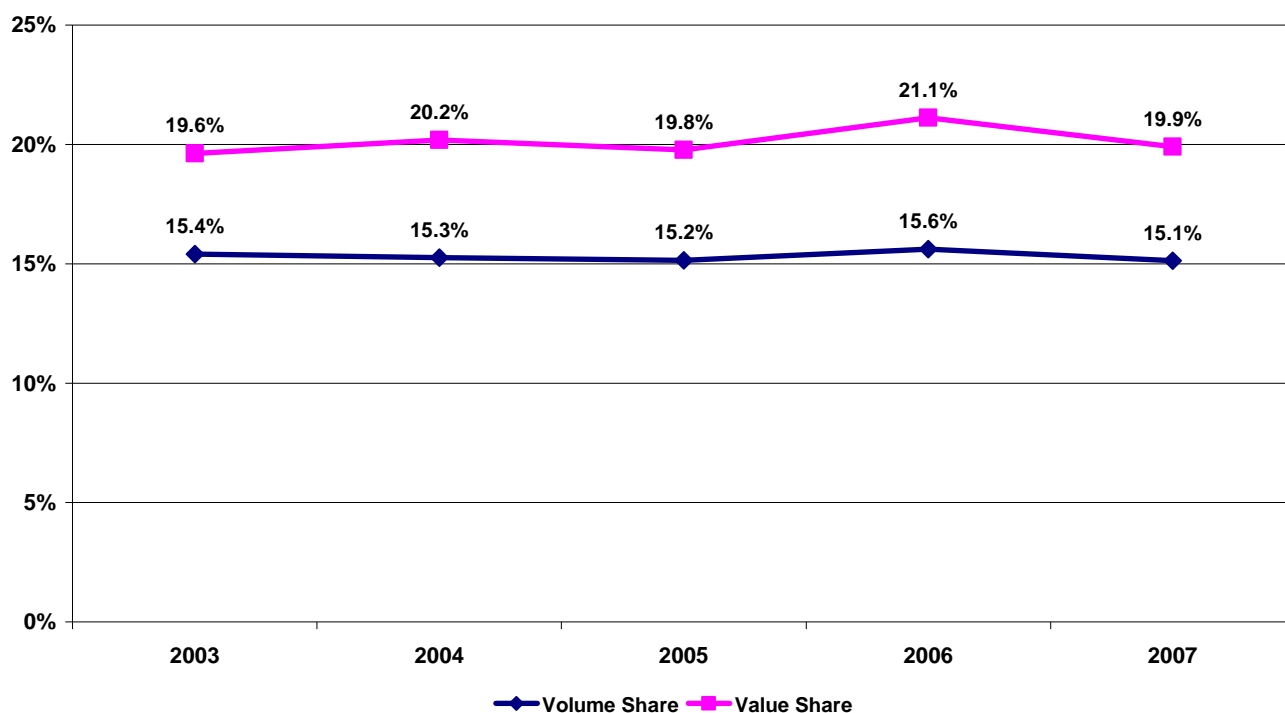
- For delegates to understand the history, context and extent of the current legislation
- For delegates to understand the current value placed on territorial copyright by publishers and authors of various types
- For delegates to understand what impact a complete removal of territorial copyright might have on the aforementioned parties and its potential flow on effect on independent bookstores
- For delegates to discuss what the possible advantages of an open market might be for independent booksellers and consumers
- For delegates to have the opportunity to voice any frustrations with the current legislation
- If possible through frank and open discussion to see if there was a consensus position in regard to any potential changes to the legislation which could be agreed to by all delegates and form the basis of a group submission, keeping in mind the benefits to all parties including consumers

A **completely unanimous position** was agreed by all Leading Edge Books members who attended. This position was subsequently communicated to all 185 independent booksellers who are members of the group seeking feedback on the understanding that it would form the basis of a group submission. It is this viewpoint which forms the basis of this submission and can be considered to broadly reflect the position of the independent sector. Leading Edge Books member stores represent approximately 10% of the books market (with market share ranging from 8 to 14% depending on the publisher).

## 1. The history, context and extent of the current legislation

It was generally agreed that the changes made to the Copyright Act in 1991 have had a very positive impact on the industry as a whole and have resulted in something of a renaissance in terms of the success and expansion of Australian publishing and Australian publishers and as a consequence the successful publication both locally and internationally of Australian authors. Independent bookshops have also continued to grow their market share over this period to the point where they now make up on average 20% of the market (by value) and have held or increased that share since BookScan data has been collected. Data supplied by Nielsen BookScan.

**General Independents Share of AP3**



The breadth and depth of the Australian market in terms of available titles, creative and successful local publishing and variety and choice of consumer retail channels was seen as having benefited greatly from these legislative changes when compared to the prior landscape of a completely closed market.

The '30-day rule' whereby publication must take place locally within 30 days of first publication overseas has unquestionably increased Australian publisher's responsiveness to international publication dates with flow-on benefits to booksellers and consumers in terms of local availability of titles that might previously have taken months to appear. Significantly, this laxity in simultaneous publication is still the case in closed markets such as the US and UK where parallel importation is prohibited.

The great benefit of the 30-day rule to the local industry has been the 'use it or lose it' principle whereby should a publisher not publish within 30 days (for whatever reason), booksellers are able to legally import the book from any other available source to meet consumer demand. This principle has ensured that for important titles which underpin much of the industry's turnover, publishers can be confident of anticipated revenues providing they meet their copyright obligations. The predictability of turnover which this provision has allowed (with its in-built checks and balances of the 30, 7/90 and single order provisions) has enabled major publishers to make significant investments in warehousing, sales & marketing and local publishing since that time.

The scale of operations of major publisher/distributors has, in turn, allowed smaller, Australian-owned independent publishers to flourish, being able to take advantage of the significant warehousing capacity and sales infrastructure of the major international publishers, services which would have been much more difficult (and at a higher price) to access on a stand-alone basis. There has also been a concomitant expansion in local printing capacity to fulfil the demand of complying with the 30-day rule both in terms of initial print runs and replenishment (replacing previously imported backlist editions). We have also as a consequence seen the development of the trade paperback format as

a default first format in this market whose price compares very favourably with first-format editions in other markets (more on this later).

It should be noted at this point that the preservation of copyright does not seem to have had a direct influence on pricing in comparison to titles on which copyright is not preserved. Books are generally priced at a level where it is felt they will sell in quantities large enough to sustain profits and are priced around a format matrix rather than a copyright matrix. I.e. Trade Paperbacks are generally priced between \$29.95 and \$35.00 depending on their page extent, illustrated content and anticipated consumer demand. There is no discernable attempt to price titles for which copyright is retained at a higher price point than titles for which it is not retained.

For independent booksellers, the other provisions introduced in 1991 have provided the flexibility to respond to consumer expectations and demand through the '7/90' and 'single order' principles. The 7/90 rule allows a bookseller to import reasonable quantities of a title if an Australian publisher does not reply to a written request within 7 days or cannot supply these books within 90 days.

Although clearly outdated in terms of the specified time periods, the 7/90 principle has worked effectively to ensure that once copyright is secured by an Australian publisher they must both respond actively with information and maintain local availability to retain territorial copyright on that title. The 'single order' provision further allows any title, irrespective of its copyright status, to be imported in order to fill a customer order, and given the vast stock holdings of both US and UK wholesalers there are very few editions published internationally that a customer cannot obtain.

### **The current value placed on territorial copyright by publishers and authors of various types**

As already stated above, the security which territorial copyright provides to publishers underpins the size and scale of services that they provide. As a large part of their turnover and profitability is dependent on a relatively small number of local and international titles for which they generally retain copyright, they place a large value on the predictability of these sales which is, to one degree or another, dependant on territorial copyright being retained. The knowledge that they are able to retain local revenue from Australian authors who may be sold internationally has allowed them to invest significantly in publishers, editors, designers and most importantly authors and has seen a wonderfully vibrant local publishing program which spans a broad range of genres, styles and voices. As a result we have also seen great international success from Australian authors initially nurtured within this infrastructure.

Rights sales are an important part of the puzzle that makes up territorial copyright, particularly in the case of independent and/or smaller Australian-owned publishers as well as Australian authors. Without the retention of the Australian rights territory there would be a significant drop in export revenues for publishers selling overseas as it was generally felt by both publishers and authors that UK publishers in particular would look to secure non-exclusive rights to the Australian market with a corresponding drop in revenues for both local publishers and authors.

The authors who spoke identified this as a major cause for concern in terms of enabling them the time and income to be able to devote themselves to writing. One can anticipate that local sales usually make up a majority of Australian author royalties and for these to be reduced from a rate of 10% (as a starting point) on a local contract to a 3% export royalty for a contract signed overseas would impact significantly on the earning capacity of Australian authors published internationally. Given that many struggle already to make a living from their writing, one cannot anticipate an improvement in this area with a completely open market and as a result we could potentially see a fall in this important cultural and economic activity with less new Australian talent being brought to publication as well.

The other significant issue highlighted by the authors who presented was editorial integrity. All recounted examples of frequently being asked to change Australian idiom by their overseas publishers in order to satisfy that market. They were very concerned about the 'global dilution' of their distinctively Australian voices should they no longer be able to control which editions of their books are for general sale in Australia.

### **2. What impact might a complete removal of territorial copyright have on the aforementioned parties and what might be its potential flow-on effect on independent bookstores?**

Publishers were unanimous in believing that a complete removal of territorial copyright (i.e. an open market) would result in a reduction in turnover of some degree although all agreed it was very difficult to quantify by how much. The current industry structure is based on economies of scale and supports a very broad range of activity on all sides of the industry from retailing to publishing to printing to authors. A reduction in turnover due to the reduction in rights sales and parallel importation of works was felt by publishers and authors to have potential impacts in the following areas:

a. Distribution

- i. Distribution within such a vast continent with continually increasing long-term fuel prices was seen as a potential area of concern. With any significant reduction in turnover there would be cost pressure to introduce fuel charges on deliveries and/or modify delivery timetables. As independents tend to order smaller quantities more frequently this could possibly impact their cost structure and ability to service their customer quickly (a key profit driver) more significantly than their larger competitors.
- ii. Either or both of these changes (fuel charges or small order surcharges/higher minimum order levels/less frequent deliveries) could potentially put pressure on book prices and/or availability, thereby encouraging customers to purchase from Amazon which can deliver quickly at a discount unobtainable by local booksellers and does not pay GST being therefore at an immediate competitive price advantage.
- iii. Most worryingly, the question of sale or return rights on new releases might need to be reconsidered in this context depending on the level of pressure exerted by a drop in sales and the fact that the risk of publishing locally was no longer balanced by the retention of territorial copyright. As the 'seeders' of the market, the retailers who read, recommend and often take risks on new authors, the loss of sale or return rights would represent a major threat to independent bookseller business models.
- iv. With no incentive to hold local stock to preserve copyright, it was felt that backlist turnover might also be impacted, resulting in a similar loss of scale. Booksellers may find more and more titles would simply not be carried locally by the local distributor or carried in smaller quantities reflecting their higher level of risk. As a result they may be *forced* to order more stock from overseas at potentially disadvantageous exchange rates and on a firm sale basis (given the cost of returning stock). This is not to say that improvements to the 7/90 rule cannot be made and in fact a consensus view was formulated by the end of the meetings in this area (see below).
- v. What should be understood is that the number of overseas backlist titles on which copyright has **not** been retained is really quite large, however due to the scale that distribution of copyrighted titles provides, local publishers have been able to maintain consistent supply and internationally competitive pricing on these titles to the point that the vast majority are still ordered locally (despite the fact that there is no legal compulsion to do so).

b. Sales, Marketing & Publicity

- i. With a reduction in scale and predictability represented by an open market, it is possible that we would see a similar reduction in the services from which independents particularly benefit. From visits by sales representatives to proof copies to author tours, there would seem to be a significant possibility that these services which help independents in particular to provide specialised services to their customers may be under pressure in an open market where security of supply cannot be ensured for the largest titles.

c. Territorial Rights Sales

- i. With the removal of the Australian territory there would almost certainly be a reduction in income from both local sales of Australian authors (due to competing international editions) and the value of the international rights. This could potentially reduce the number of authors able to make a living from writing as well as threatening the uniquely Australian cultural elements of the works of authors who become successful internationally (as detailed above).
- ii. Without the guarantee of local sales and royalties and a significant reduction in rights sales it is hard to see anything but a shrinkage of local publishers such as Text and Scribe who have

championed a wide range of new Australian and international talent, as well as in the local author stables of large international publishers. Aside from the cultural and export revenue implications of this potential outcome, independent booksellers rely to a greater degree on 'breaking' new Australian authors than other sectors of the market. A reduction in local publishing represents a reduced opportunity for independents to continue to differentiate their businesses from larger chain stores and mass merchants by actually reading and recommending to their customers the vast range of Australian talent which flows from publishers taking a risk on publishing new authors.

d. Remainder 'Dumping'

- i. In an open market there would be nothing to stop (primarily US) publishers 'dumping' excess local stock into the Australian market. With much higher return rates overseas in the US domestic market, this is particularly a threat to the livelihood of Australian authors published in that market with little or no revenue returning to the author or local (originating) publisher through these sales.

e. Breadth of Titles

- i. With the current 30-day provisions, publishers are able to take more risks in retaining copyright on a broader range of titles than may be the case in an open market. An excellent example is *The 19<sup>th</sup> Wife*, published in Hardback in the US in August 08. With the security of supply that the 30-day rule provides, Random House was able to publish and promote a trade paperback edition of this title in September with great success for independents in particular. Without the security that retention of copyright ensures, it is questionable whether so many of these kind of titles would be published in a local format with supporting sales, marketing and publicity support, thereby reducing consumer choice (it would most likely have been left as a Hardback 'indent' i.e. order-to-order title without copyright retention rights) and sales opportunities for booksellers.

f. Print Costs and Environmental Impacts

- i. Australia's local book printing industry has, to a large degree, grown out of the demands of the 30-day rule. Some background on simultaneous print runs was covered in each of the meetings which helped greatly to understand the mechanics of printing locally. In order to publish simultaneously, a local publisher needs to follow one of these two paths:
  1. Print locally. This relies on firstly having the digital files available and being able to secure a large enough print run to justify local print costs.
  2. Print overseas.
    - a. Print a simultaneous trade paperback edition (the overseas publisher will usually be printing hardbacks in the same run) well in advance and ship by sea (quite difficult given the stock holding implications and print deadlines of the overseas publisher).
    - b. Airfreight stock of an appropriate edition if available (with consequent increases in freight costs and emissions). As the default first-format is both the UK and US markets is Hardback (at a much higher price point) often this become a question of either printing locally in Trade Paperback or generally choosing not to retain territorial copyright and waiting until a paperback edition is published overseas.
- ii. With the ACCC rejecting an amalgamation of Australia's two main book printers in 2008 due to concerns over competition and the negative effect on pricing on a single major player, it would be hard to see how a reduction in local print volumes (which would for all the reasons outlined above almost certainly result from an open market) could put anything but upward pressure on local print prices. The question of whether both printers could in fact remain viable in these circumstances was also raised. Should we not be able to retain both printers, both the number

of available print slots as well as pricing would be under threat with little discernable benefit to consumers, booksellers, publisher or authors.

- iii. A reduction in local printing almost certainly corresponds to an increase in air-freight either out of the UK or (primarily) the US. Not only would this in time produce upward pressure on retail pricing with fuel supplies diminishing and environmental levies almost certain to increase, it would also almost certainly increase the emissions created by the industry as a whole when compared to printing locally.

### 3. What might the possible advantages of an open market be for independent booksellers and consumers?

According to the Productivity Commission Issues Paper, the following arguments have been raised for removing copyright restrictions:

*A key argument put forward for removing the restrictions has been that those restrictions allow higher prices to be charged for books in Australia, thereby disadvantaging book consumers. To the extent that the restrictions do keep cheaper volumes off the shelves of Australian bookstores, they are seen by some as discouraging readership and the broader social and cultural benefits it may bring. Some booksellers have expressed a related concern that, under the current arrangements, they are disadvantaged as they need to pay higher prices for their merchandise, and lose some custom to overseas internet sales.*

*Proponents of the removal of Australia's parallel import restrictions also point out that Australia is a significant net importer of copyright material, including books. They go on to argue that the benefits of the restrictions for local book creators are far outweighed by higher payments from Australians to foreign book creators.*

*It has also been argued that if government has the objective of assisting Australian book producers (whether authors, publishers or printers), direct subsidies or other policy instruments could achieve this objective at less cost to the community than is associated with parallel importation restrictions.*

Various points of view were raised in regard to the arguments outlined above. To break it down a bit further, I have conducted an analysis on the top 20 titles sold by the 79 members of Leading Edge who submit to Nielsen BookScan in the week ending 29/11/08. See Excel and PDF files attached to this submission. These titles are very representative of Leading Edge Books members' overall bestsellers for the entire Christmas period.

The titles analysed represent approximately 13% of sales of the top 1000 titles in the given week. All have been published in the last five years. US and UK RRP prices and publication dates taken from Amazon.com and Amazon.co.uk. As most booksellers and publishers report a ratio of between 70-80% new releases and 30-20% backlist this would seem to be a broadly appropriate analysis of the books people are actually buying.

**Assertion 1:** Copyright restrictions allow higher prices to be charged for books in Australia, thereby disadvantaging book consumers.

- 16 of the top 20 titles have been published internationally. Of these, 8 retain territorial copyright (*Guernsey*, *Private Patient*, *Dear Fatty*, *Kick*, *Gallop*, *Eclipse*, *A Most Wanted Man*, *Breaking Dawn*).
  - *Guernsey* was published here in HB at \$29.95. The equivalent price independent booksellers would need to charge to retain a similar margin (45%) on the US edition is \$37.87 (26% higher than the Australian Recommended Price-ARP and 32% higher than the Average Sell Price-ASP) and \$40.51 on the UK edition (35% higher than ARP and 42% higher than ASP). What is interesting is that for this title **there are directly equivalent formats in each market**, in contrast to most new release comparisons. It certainly does not demonstrate a higher price being charged based on the retention of territorial copyright, quite the opposite.
  - *The Private Patient* was published here in Trade at \$32.95 in Nov 08 (having retained copyright by making the HB available to order for Sep 08 release). The equivalent US HB would need to be sold at \$46.65 (42% > ARP, 51% > ASP) and UK HB at \$60.52 (84% > ARP, 95% > ASP). No evidence of retention of territorial copyright causing higher prices to be charged to consumers.

- *Dear Fatty*, published here in Trade Paperback at \$34.95 has not been published in the US. The UK HB would need to be sold at \$63.82 (83% > ARP, 97% > ASP) to retain 45% margin. Again, no evidence of copyright causing higher prices to be charged to consumers.
- *Kick! And Gallop!* published here at \$19.95. US equivalent editions sell price \$24.04 (20% > ARP, 26% > ASP). UK equivalent sell price \$32.77 (64% > ARP, 72% > ASP). Once again we have **directly equivalent formats in each market** but no evidence that retention of copyright has resulted in higher prices being charged.
- *Eclipse* by Stephenie Meyer and published here in trade paperback at \$29.99 is Book 3 of the series - Books 1 & 2 do not retain territorial copyright as the quantities sold on release did not at that time justify a local print run. The US edition is a Hardback which would need to be sold here at \$38.54 (29% > ARP, 35% > ASP). The UK edition is a smaller B-format edition which does not include the additional content of the Australian demi-Trade Paperback and could be sold for \$25.05 (16% < ARP, 12.5% < ASP). An argument both ways here, although the Australian edition is a different product having additional content not included in the smaller UK paperback and the differential being much greater with the US hardback edition than the UK paperback.
- *A Most Wanted Man* published here in trade paperback at \$32.99. US HB equivalent could be sold at \$49.79 (51% > ASP, 59% > ARP). UK HB \$60.52 (83% > ASP, 93% > ARP). A striking differential in price due to the format differences but no evidence of price 'gouging' due to retention of territorial copyright.
- *Breaking Dawn* by Stephenie Meyer is Book 4 of the series published here in trade paperback at \$29.99 is published in both the US and UK in hardback and could be sold for \$44.13 for the US (47% > ASP, 57% > ARP) or \$48.34 (61% > ASP, 72% > ARP) for the UK edition. Once again, Australia is paying the lowest price on a title retaining territorial copyright.
- Of the 8 titles published internationally retaining territorial copyright, there is only one example (out of a potential 16) of an overseas edition being able to be sold below the ARP or ASP while retaining margins. Even this exception is not an identical format being a 'speced-down' B-format as compared to a trade containing exclusive additional material.
- There is strong evidence here based on actual bestselling titles that prices are determined by factors other than retention of copyright and that there would be significantly increased price pressure should an open market result in local trade paperback editions being abandoned. There is absolutely no evidence that copyright restrictions cause books to be sold at a higher price and as we have already seen, the introduction of an open market could well put at risk the many factors that allow Australian publisher and booksellers to retain competitive pricing on new releases.
- The remaining 8 internationally published titles do not retain copyright as follows:
  - *The White Tiger* (Booker prize winner). Published in Trade Paperback in May 08 (thereby missing the 30-day retention of copyright, UK edition published March 08) at \$32.95. The US published a B-format paperback only once the prize was announced. The US edition could be sold here at \$24.83 (25% < ARP, 21% < ASP) as copyright is not retained. UK HB edition would be \$39.17 (19% > ARP, 25% > ASP). This is an interesting example where the Australian consumer's preference for the Trade Paperback format is demonstrated and refutes the idea that copyright restrictions are responsible for higher prices as copyright was not retained on initial publication and booksellers are free to import the cheaper US edition if they so desire. This title would not have been printed simultaneously on release due to the absence of a large enough market for it at that time. Sales have only become significant since it won the prize. The Australian price sits pretty much in between the two comparable editions, as reflects the trade paperback format sitting in between the smaller US B-format and the UK Hardcover.
  - *Twilight* film tie-in and standard editions published here in Demi Trade Paperback at \$24.99 (copyright was not retained on the original edition in 2006). US B-format (standard edition) could be sold for \$21.79 (13% < ARP, 8% < ASP), UK B-format at \$26.27 (5% > ARP, 11% > ASP). Once

again a higher price is sustained in this market on the basis of a slightly different format rather than copyright restrictions.

- *New Moon* (special edition) published here with additional content in Demi Trade Paperback at \$29.99 (copyright not retained on original edition in 2007). US B-format (without additional material) could be sold at \$22.79 (24% lower) and UK B-format (without additional material) could be sold at \$25.63 (15% lower). Once again a higher price is sustained on the basis of a different format and the inclusion of additional content rather than copyright restrictions. If the creation of an open market in Australia would have a significant downward impact on prices, why would it not be demonstrated by stores selling this title already seeing as it does not retain territorial copyright?
- *Dreams from my Father* by Barack Obama was published in Feb 08 at \$24.95 which is much the same as the US paperback could be sold. The UK edition could be sold slightly more cheaply but again as it is an open title, booksellers are currently free to do so.
- *Eat, Pray, Love* published at \$24.95 is at almost exactly the same price that overseas editions could be sold here for.
- *Enigma* by Australian author Graham Base does not retain copyright but the US edition would be 28% more than the Australian ARP as an import.
- *The Brain That Changes Itself* published at \$35 could be sold at 18% < ARP and 14% < ASP(US edition), 6% < ARP & 2% < ASP (UK edition). Once again it seems to be the customer preference for the trade paperback format which allows a marginally higher price to be charged rather than retention of territorial copyright as it is not retained on this title.
- Ironically there are more editions of titles which **do not** retain territorial copyright (10 out of a possible 16) being sold at a higher price point than comparable (and freely available) overseas editions! This compares to just 1 out of 16 which **do** retain territorial copyright.
- **Clearly based on this evidence the retention of territorial copyright *does not* cause Australian consumer to pay a higher price for books. This also seriously calls into question any potential price benefit to consumers should the 30-day rule be removed.**
- The final 4 titles making up the top 10 are Australian originated.
  - *Wanting* published in HB at \$35.00. US publication is scheduled (also in HB) for April 09 at an equivalent price of \$42.92 ( 22.62% > ARP). Copyright obviously retained but at a lower price than internationally.
  - *The Slap*. International publication not scheduled. \$32.95 Trade Paperback.
  - *Sing! Book 2009*. International publication not scheduled. \$13.95 Paperback.
  - *No Time to Cook*. International publication not scheduled \$39.95 Paperback

Assertion 2: To the extent that the restrictions do keep cheaper volumes off the shelves of Australian bookstores, they are seen by some as discouraging readership and the broader social and cultural benefits it may bring

- Clearly based on this analysis, restrictions **do not** keep cheaper volumes off the shelves. 10 out of a possible 16 overseas editions of 'open market' titles in this list could be sold cheaper here already should consumer demand require it.
- The second assumption in this assertion is that cheaper books = more readership. If we assume that these 'cheaper' books are coming from either the UK or US we would then assume that these countries already have a higher readership level than Australia. It would be interesting to see the research that has proven this point as it is generally thought that readership levels in Australia are some of the highest in the OECD. This seems to be a somewhat simplistic assumption regarding the determinant factors of readership levels.
- From my analysis there is no evidence that copyright restrictions keep cheaper volumes off the shelves, in fact, without copyright restrictions it is almost certain that not only would price pressures increase, but the range of titles widely available to Australian consumer would also be reduced due to more conservative local publishing and printing (see the example of *The 19<sup>th</sup> Wife* above) and reduced local stock holding of backlist.



Assertion 3: Some booksellers have expressed a related concern that, under the current arrangements, they are disadvantaged as they need to pay higher prices for their merchandise, and lose some custom to overseas internet sales.

- Looking at the analysis above, it is hard to see any evidence for this assertion. The only titles (bar a single edition) which are being sold at a higher price point than corresponding international editions are titles **without** copyright restrictions (which it should be noted are not in the same format as the overseas edition).
- The loss of custom to overseas internet sales does not seem to bear any relationship to copyright restrictions and is more a factor of the vastly different cost, distribution and discount structure of Amazon.com which also benefits from not having to charge GST on all sales. The removal of the current arrangements would see even more sales lost to Amazon with the increased price pressure on local printing and stock holdings almost certain to result in driving more customers to them!

There is no evidence in this analysis that copyright restrictions cause higher prices to be charged by publishers or independent booksellers in Australia. If anything the figures are a testament to the global competitiveness of local publishing and show how the evolution of the local trade paperback format has resulted in a dynamic and price sensitive local market.

In fact, the potential reduction in turnover and scale that an open market may create could be argued to pose a greater threat to local pricing with the reduction in printing competitiveness and increased costs of sales, marketing and distribution on smaller sales volumes resulting in increased cost pressures for publishers and distributors than the retention of the current legislation.

Assertion 4: The benefits of the restrictions for local book creators are far outweighed by higher payments from Australians to foreign book creators

- Given that there is little evidence of higher payments being influenced by copyright restrictions, this argument does not hold much weight.

Assertion 5: If government has the objective of assisting Australian book producers (whether authors, publishers or printers), direct subsidies or other policy instruments could achieve this objective at less cost to the community than is associated with parallel importation restrictions.

- Seeing as there do not seem to be additional costs to the community arising from parallel importation restrictions, it is hard to argue that they should be replaced by new government spending.
- The market operates efficiently and effectively for consumers under the current legislation with the inbuilt checks and balances provided by the 30, 7/90 and single order rules. Improvements could be made to these provisions to further cement these benefits but to replace a dynamic and market-based, internationally competitive industry with one dependent on government handouts would seem a retrograde step.

What other possible advantages to consumers or booksellers might there be in an open market not mentioned in the Issues Paper?

1. Margin renegotiation. It seems apparent that some large retailer groups are looking at the open market as an opportunity to apply leverage to publishers in regard to margins, i.e. "You increase our margin (either across the board or on a particular title) or we'll order it from overseas". It is hard to see in general the titles for which this would be a realistic opportunity (without treating them as 'loss-leaders') or that publishers would be in a position to provide more margin in a less predictable market with increased costs due to a reduction in scale. Certainly this doesn't seem to be a realistic opportunity for independent booksellers who do not have the collective and unified buying power to exert such pressure.
2. Market share 'ambit claims'. This is where, in an open market environment, a particular retailer might identify a (previously copyrighted) title and imports it in high volumes presumably to sell at a very competitive price with a view to increasing market share. Given that there are many best-selling titles currently free of copyright restrictions (8 out of our top twenty in the analysis above), it is hard to see this as a significant new opportunity to either reduce the cost of books in general to consumers or increase independent bookseller market share as the price differentials between the markets in terms of formats are generally quite large. As regards independents this represents an even smaller opportunity given their relatively small individual buying and marketing power (and seeing that Leading Edge Books does not purchase on their behalf).

3. Remainders of titles currently retaining copyright. Although this may represent a short-term opportunity to 'undersell' existing editions with some US remainders (as the US domestic market operates on a much less efficient higher return rate than Australia), this also raises the issue of remainder 'dumping' whereby the livelihood of Australian authors is threatened by reduced revenues in their local market (as outlined above).

Given the large number of remainders already available in the market (both local and US editions of titles not retaining copyright) this would seem to be a minor and short-term potential benefit based on a relatively small range of titles. Again it has the potential to impact on the scale of the local industry with flow-on effects for local editions as described above. While independent booksellers would probably avoid buying Australian authors in remainder form, there could be absolutely no guarantee that other retailers would do the same putting independents in an invidious position.

## 5. What are the frustrations with the current legislation?

### 30-day Rule

Booksellers (and for that matter publishers) are all very supportive of the principle, engendered by the 30-day rule, of simultaneous local publication. Some frustrations were expressed by booksellers with delays in publication of important titles where they could potentially lose sales to Amazon (particularly due to the speed of supply, unmatched discounts and lack of GST levied on these sales). Having worked on both side of the industry, I can vouch for the fact that publishers are generally very aware of this dynamic (which also impacts on their own sales) and endeavour, whenever forward order commitments from booksellers, shipping and file availability allow them, to print simultaneous (or on occasion even early) editions.

Generally the reasons for publication within 30-days, but not simultaneously, are:

- a. Unavoidable shipping delays
- b. Delays in receiving digital files (particularly an issue with US publishers who, not having a 'use it or lose it' provision in their own copyright, do not understand the necessity for simultaneous availability here).
- c. Availability of print slots. There are only so many slots available in any given month so if a decision is made relatively late to print locally to fulfil strong local demand, publication may be slightly behind overseas dates.

### 7/90 Day Rule

The time periods of this provision are completely out of step with current consumer and retailer expectations (and practice). Again given the pressure that a GST-free and heavily discounted Amazon delivery has applied to customer expectations, the proposition that a customer should be willing to wait 7 days for a publisher to even respond to a request for information, or that they should be willing to wait for 90 days once ordered before the book can be ordered elsewhere if not supplied, is clearly ridiculous and antiquated. Consumers expect answers from retailers 'then and there' as to price and availability and if booksellers are unable to provide a definite answer on price and availability there was consistent feedback that the reply would be 'it's available on Amazon, I'll just order it there'...once again, without GST revenue being earned by Australia.

### Single Copy

Both publishers and booksellers felt that this provision provided excellent flexibility for both consumers and retailers ensuring that consumer demand during periods where local publishers were out of stock of titles retaining copyright could be fulfilled by importation.

6. Was there a consensus position in regard to any potential changes to the legislation which could be agreed to by all delegates, keeping in mind the benefits to all parties from consumers to booksellers to publishers/distributors to authors?

There was a unanimous view from Leading Edge member stores at our recent meetings that the concept of territorial copyright was an important one in underpinning the structure and scale of the industry and that the particular way in which it had been implemented in the Australian market had greatly improved availability, pricing and choice when compared to the previously closed market. There do not seem to be any significant advantages to authors, publishers, printers, distributors, independent booksellers or consumers in a complete removal of territorial copyright.

All delegates felt that a completely open market represented significant risks to the structure and scale of the local market which is both competitive at an international level and supports a comparatively wide range of retail sectors servicing the needs of a correspondingly wide range of Australian book consumers. Independent booksellers, who are so active in encouraging readership in children, support Australian authors very strongly and are often closely involved with their local community could be seen to be particularly at threat given their high relatively service levels from local publishers and relatively weaker negotiating strength as compared with some other sectors of the market who purchase centrally.

After much discussion and debate of the issues outlined above, the following completely unanimous position was agreed.

### 30-day Rule

The meetings unanimously supported the retention of the 30-day rule, providing as it does such a strong incentive for publishers to respond proactively to international publication dates and retailers the option of ordering alternate editions on titles for which copyright is not sought by the local publisher/distributor. Some discussion was held as to whether the time period could be shortened on this provision, but the conclusion was drawn that due to the inherent structural difficulties of printing completely simultaneously at times such as delays in shipping, receipt of digital files and availability of print slots, there was no great advantage in shortening the rule as it would simply result in less books being printed within the 30-days rather than more.

### 7/90-day Rule

There was unanimous support for the proposition that booksellers should be able to make ordering decisions based on information posted on TitlePage (the APA's price and availability website), other publicly accessible websites or from the customer service departments of the relevant distributor.

- In regard to new titles, if a local publication date has not been listed online by the date of international publication, or if it is listed for release at more than 30 days post-overseas publication, titles should be able to be imported freely.
- Should publication be scheduled to take place within 30 days but this information is only made available post publication overseas, orders already placed (prior to the announcement of local pub date) should be deemed free of copyright restrictions
  - E.g. A title is listed for overseas publication on 1<sup>st</sup> Jan. It is listed for a local publication date of 20<sup>th</sup> Jan on the 10<sup>th</sup> Jan. All orders placed up to 10<sup>th</sup> Jan should be free from copyright restriction. Orders post 10<sup>th</sup> Jan should be required to be placed with the local rights holder.
- As regards titles on which copyright is anticipated to be retained by publication within 30 days, booksellers should be able to make an assessment of the copyright status of a title based on the anticipated due date posted online and order from either the local or international source accordingly.
- In relation to the time period of the 90-day provision, it was unanimously agreed that this should be shortened to 30 days to reflect improvements in supply (in particular the increase in local print runs) and to ensure that publishers are as responsive as possible to their responsibilities to make stock available locally in return for retaining copyright.
- This was felt to greatly improve the current system and remove copyright retention on titles which publishers are currently sea-freighting as non-stock (indent) titles. This would further encourage investment by local printers in 'print on demand' services for smaller print runs ensuring better availability and lower environmental impacts (due to less erroneous stock holding and air freight emissions).

### Single Order Rule

All felt this should be retained as an important balance to the rights bestowed on copyright holders by the legislation, enabling booksellers to respond effectively to specific customer needs and to maintain supply for customer orders when publishers are out of stock of titles with copyright retention.

In summary, the consensus position was felt to further improve the flexibility and responsiveness of the industry to consumer and bookseller expectations without removing the security and accountability which has underpinned the continued growth of the Australian book industry since 1991. As regards independent booksellers it was seen as continuing to help them to be able to provide the pricing, service, range and flexibility which their customers value and support with their custom.

Given the unanimous nature of the position stated above, it was agreed that Leading Edge Books would submit this position as representative of its members to the Productivity Commission whilst also inviting them to submit their own unique perspectives should they so desire.