

PRODUCTIVITY COMMISSION STUDY OF COPYRIGHT RESTRICTIONS ON THE PARALLEL IMPORTATION OF BOOKS

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To the Commissioners:

I am writing to you to express my views regarding the Productivity Commission Study of Copyright Restrictions on the Parallel Importation of Books. I would welcome the opportunity to present and answer questions about these arguments face-to-face at a hearing, if appropriate.

In summary my submission is as follows:

- I have worked in publishing for 24 years – both overseas and in Australia – and have run Walker Books Australia (WBA) for 15 years (section 1).
- Based on this experience I have grave concerns regarding the potential overall negative impacts of parallel importing (section 2).
- Children's authors and illustrators work in a marginal economic environment (section 3), placing them at great risk from these impacts. Limited protection of their interests is currently provided by the law.
- The growth of WBA's local publishing has made an important contribution to the economic and creative life of the Australian publishing industry and its customers and stakeholders. This contribution – and associated jobs – would be undermined by parallel importing (section 4).
- The main direct risk to my business from parallel importing is the removal of critical income generated from the part of my list that makes the most money – the bestsellers. This could be lost through chain retailers importing the cheapest available overseas editions of our bestsellers (section 5), with knock-on effects for our ability to nurture choice and cultivate high-quality creative talent.

1. MY BACKGROUND

WBA is the subsidiary of the UK award-winning children's book publisher Walker Books and sister company to the US children's book publisher Candlewick Press. The Walker Books Group is a unique organisation; we are owned solely by trusts comprising all the staff, plus invited authors and illustrators. Walker Books is a world leader in publishing picture books and has a reputation for its production and design quality and for the inclusive, supportive and positive treatment of its authors and illustrators.

Walker Books is a *trade publisher* (that is, we publish our children's books geared to the retail and school library market).

I joined Walker Books in the UK as its export and British Commonwealth rights sales manager in 1986. I emigrated to Australia in 1989 to work with the children's publisher Scholastic Australia as their trade sales director. Three years later, in 1993, I set up WBA with an initial staff of three. In 1999 I set up Walker Books New Zealand. In 2008 at Walker Books Australia we celebrated our 15th anniversary with 26 staff and an annual turnover of over \$11 million.

With the exception of my first two years in publishing when I worked for a remainder and promotional reprint company, I have always worked in children's book publishing. For five years, I travelled five months a year as an export manager. I was selling English language editions to the British Commonwealth market, the US and Japan, and for three of those years was selling French Canadian, Japanese and Afrikaans foreign language editions.

As a group director of Walker Books I can compare, at first hand, the unique, enthusiastic and special book market for Australian child readers and their parents, teachers and librarians with that of the US and the UK.

2. THE MAJOR RISKS FROM PARALLEL IMPORTING

The daily reality that I face in running my business is that children's book publishing operates at the margins of economic viability. Some measure of certainty regarding the sales of WBA's bestselling titles is vital in underwriting my capacity to offer customers a diverse product range and to cultivate new talent.

Rather than being the unfamiliar business of government, it is best that this cross-subsidising occur within a limited company, where I bear the risk of employing a single editorial team whose job is both to develop new authors and illustrators and to manage an established bank of talent.

Under parallel importing, I would not be able to bear this risk: my bestselling titles would be cherry-picked by competing distributors of foreign editions.

The consequent loss of turnover could threaten my ability both to refresh the gene pool of Australian creativity, and to employ Australian workers in a variety of roles.

3. AUSTRALIAN AUTHORS, ILLUSTRATORS AND THEIR PUBLISHERS

3.1. *Cultivating homegrown creative talent*

As publisher I know that many Australian authors and (especially) illustrators live on a very low income due to a lack of work opportunities and the restrictions of a small market.

An author or illustrator gains experience in improving their craft in two ways: Firstly they can work closely with an editor or designer who can harness their talents, teach technical skills and give guidance and direction. The second way is through the experience of publication itself – being able to look back on the work they have done and assess how they could have done it differently, by getting market feedback and reviews, and often by learning from their mistakes.

One of the concerns regarding parallel imports arises from the potential demise of local publishers and the ensuing lack of opportunity for new and developing authors.

Were there fewer publishers or publishing opportunities in Australia due to parallel importing, some Australian authors / illustrators *might* be published by UK or US publishers. It *is* possible to work long distance with a publisher – WBA publishes authors in who live WA and there would be little difference in time and distance between publishing them and an author based in Asia, say. However we do share language, cultural, society and market experiences with our WA based authors which we wouldn't with any based in Asia.

We have over 60 authors and illustrators on our list – realistically very few could be absorbed by other overseas publishers as their originating publisher. No Australian children's authors or illustrators come to mind as being *originated*¹ with US publishing houses at present other than already established names such as Mem Fox, Bruce Whatley and Julie Vivas. For example, our US sister company originates one Australian illustrator – who has lived in the States for years. I do not know of any *Australia-based* children's authors or illustrators who have been successful overseas without first being successful in Australia.

The issue of how authors and illustrators would get *established* in a reduced publishing environment following parallel importing is a serious one. How

¹ By 'originated' I am referring to the book being conceived from scratch with that publisher as opposed to a publisher buying rights to an existing work.

would they access those overseas markets which are already full of authors and illustrators and – in the case of picture books – in a declining market?

In a reduced publishing environment there would not be the range or number of publishers with the resources to take a risk on such authors' or illustrators' first books that would then give them the profile to access overseas publishers. Even an author or illustrator of *immense* talent still has to be shown by an experienced editor how to make their content into a book that works for the age group it is aimed at.

Part and parcel of being a children's author or illustrator is being able to talk to your audience about your books. A first time author based 12,000 miles away from their originating publisher with one book to their name – or even a few books to their name – is not a viable option to tour and promote. This is the realm of bestsellers only.

At WBA we – like many of our children's book colleagues – visit tertiary institutions discussing course content with the teaching staff (for illustration and design courses) in relation to market needs, providing talks on making books for children and giving feedback on individual students' work. We attend final year art shows. We attend talks and conferences at writers centres for aspiring authors. We provide hours of feedback to unpublished and published authors who submit promising work that might not be ready for publication – yet. We review hundreds of artist portfolios and provide feedback.

A decline in the publishing industry would mean a decline in the opportunities and mentoring available to our aspiring authors and illustrators. This couldn't be replaced by a government grant; you can't replace widespread industry know-how and knowledge with centralised subsidy. Ideas need form in which to be expressed and practical direction as to how best achieve this.

3.2. *Existing contracts: the limits on protection for creativity*

There is a view that in an open market, the author / illustrator will be in a position to protect their local publishing interests with the contracts they have with their overseas publisher to stop cheap remaindered editions entering the market (thereby devaluing the local edition from which an author / illustrator gains the most royalties.)

This is a misconception on a number of levels.

Firstly, it is extremely difficult to control the overseas dissemination of remaindered stock. I know – I used to sell them. Remainders from the US usually come not from publishers' own stock, but from wholesalers. The publisher sells at high discount to a wholesaler or bookclub. The wholesaler / bookclub has overstocks and so sells on to a US remainder dealer. The stock can change hands a few times between remainder dealers before it gets

exported – to a local remainder dealer or directly to a local bookseller or chain. The overseas publisher, whilst being able to control to whom they sell remainders directly, is rarely in a position to stop this sort of sale.

Secondly, our local author would be one of thousands on an overseas publisher's list and usually the only staff with whom they would have contact would be editorial or maybe marketing, not operational staff who would be managing remainders.

In my experience the only way to stop remaindered books entering the Australian market is to take legal action against the dealer who has imported them. This can be done currently under Copyright Law and Section 53 of the Trade Practices Act. This of course would change under parallel importing. What's more, an author would not be able to afford this sort of legal action and neither in reality would an author be likely to be *aware* of remaindered editions until the damage had been done in the marketplace. Authors' and illustrators' earnings would be even more vulnerable in their home market under parallel importing.

3.3. *The importance of Australian content for Australian children*

There have been valid concerns expressed about how books originated with an overseas publisher could be stripped of the Australian flavour that provides an affirming cultural foundation for children growing up in this unique country; Christmas in the sun, winter in June, the bush, native flora and fauna.

Canadian children's literature academic and frequent visitor to Australia Ron Jobe had this interesting assessment to make of the impact on Canadian children's books following the Free Trade Agreement between the US and Canada in 1989:

'Canadian books have been globalized to such an extent that its children do not get a good sense of their own country, particularly of place names and national symbols. This is a result of the North American Free Trade Agreement and the pressure from American sales representatives to present more sanitized generic settings. In an attempt to make titles more acceptable to the American market, Canadian books increasingly appear to be lacking "overt Canadian content"...

'[A] recent study of Canadian realistic picture books listed in Our Choice and published between 1998 and 2000...found that "only ten out of the 104 realistic picture books (9.6%) provide clear, well-defined images of Canadian culture".

'[As the] analysis of the 124 Canadian historically themed picture books found...that almost 40% of the books use only generic terms rather than specific names, it seems evident that the Americanization of Canadian children's literature goes beyond the deletion of British-Canadian spellings. In addition, actual place and geographic names were often omitted. Thus, children exposed

to these books will not be able to determine whether or not the story was set in Canada or a comparable part of the United States...²

4. THE ECONOMIC CONTRIBUTION OF WALKER BOOKS AUSTRALIA

4.1. *Direct investment in publishing jobs under the current '30 / 90' system*

Quality children's books are extremely expensive to produce before they even get to a printers. They are onerously time-consuming to make. They involve a lot of discussion and collaboration. Children's books require such a wide range of considerations; what children will like at different stages of their development, what parents will find acceptable, what aspects of a book will make it useful to teachers to share with children, where varying interest levels or age suitability need to be matched to differing ranges of reading abilities, choices about social responsibility... let alone illustrative style, page design, text types, spelling and punctuation choices. Producing high-quality children's books requires a *significant investment*, especially in staff.

We have been able to build our local publishing program on the strength of our bestsellers from the US and the UK. As I illustrate below, the growth of our business has resulted in jobs and opportunity. If cut-price imported editions of our bestsellers appeared in the market through parallel importing, we would lose the revenue we need to support our local publishing list.

One has to sell a lot of books to make a business in children's publishing – in 2008 our average net unit sale was less than \$8.50.

For 12 years from 1993 to 2006 at WBA we marketed and sold books published by our UK and US companies alone. Once we had a \$10 million turnover of those books – *enough in our estimation to support a local list* – we appointed our first editor in November **2006** who brought our staff numbers up to **18**.

In **2007** we published our first **nine** locally published titles (their turnover approx \$125,000) and by the end of the year had achieved a total turnover of \$10 million with a staff of **26**.

By the end of **2008**, Australian turnover of the 28 books we published locally in that year was over \$600,000. Additionally, export sales of our locally produced books overseas netted over \$400,000 in 2008. Our total turnover exceeded \$11 million with a staff of **27**.

In **2008**, we had a creative staff of **six**. In **2009** we will be publishing a further 30 new, locally published books. We have just appointed a new

² Marilynne V. Black and Ronald Jobe (2005) *Are children gaining a sense of place from Canadian historical picture books?*, **The Looking Glass : New Perspectives on Children's Literature**, 9(3) <http://www.lib.latrobe.edu.au/ojs/index.php/tlg/article/view/35/40>

editorial assistant, created a new role of junior editor and appointed a full time senior designer. (So we have now a creative team of eight.) We are currently recruiting a junior accountant to assist with the extra workload created by our local publishing and our staff will number **28**.

Over **30** books are contracted for publication in **2010** and beyond, providing work to **17** authors and **19** illustrators. **13** of the authors and **three** of the illustrators have never been previously published. In total, since we started our local list we have been working with over **60** authors and illustrators.

All our locally published fiction is printed in Australia and most of our colour separations are done in Australian repro houses.

Not only is our local publishing program providing Australian children with culturally relevant books, **it is creating jobs in and out of house, and creating export earnings.**

4.2. *The hidden economic and cultural benefits of indirect investment by children's book publishers*

My children's book colleagues and I work with minimal income and expenditure – the expression 'making a silk purse out of a sow's ear' comes to mind. However, there is the expectation by the book trade and by the school and library markets and the literary community that we support them, in a way perhaps that is not expected of other areas of trade publishing other than literary fiction.

Author tours

Since WBA set up in Australia in 1993 we have toured 17 overseas authors and illustrators and borne the cost of those tours (with some authors touring two or three times). *No arts organisation has ever had to fund the festival or conference appearance of a Walker author / illustrator.* Most of the tours have been Australia-wide, including Tasmania and the NT in some cases. Most of my fellow children's book publishers would have the same experience.

This year, readers will have the opportunity to meet recent winners of the US National Book Award (MT Anderson) and the UK Carnegie Award (Mal Peet). These visitors will do festival and conference talks, writing workshops and school visits. These tours usually cost us in excess of \$16,000 each, plus airfares ex UK or US.

In addition we have toured across Australia established local author / illustrators such as Bob Graham and Jeannie Baker. Jeannie's nationwide collage art exhibitions have also been supported by WBA both financially and organisationally.

A good example of a nationwide author tour is the tour of WA based author / illustrator team Mark Greenwood and Frané Lessac, whom we brought from

Perth to Canberra last March to launch their book *Simpson & His Donkey* at the Australian War Memorial. Following this, they did children's school holiday workshop events at the AWM for two days, then events in Sydney and Melbourne, culminating in Mark speaking on a panel at the Children's Book Council conference there. The cost for this tour was just under \$5000 and kept a staff member on the road for over a week.

We organise for our local authors to participate or perform at teacher in-service training and conferences, librarian conferences, children's book festivals, literary festivals and schools and libraries. We never charge for the above author visits and bear the costs ourselves. This authors do in addition to any paid school visits that they pursue individually. We organise at least two such events a month and many take place over a number of days.

Materials

We employ four staff members in our marketing department and the major aspect of their work involves providing material and information for booksellers and / or schools in relation to our local authors. Since the set-up of our local publishing, we have established the full-time role of educational marketing manager, and 85% of the work of this staff member relates to providing information on our local books, authors and illustrators to schools and libraries.

Below are just some examples of the sorts of services we provide in the form of the free information for schools, libraries, children and their parents to download from our website:

- Time-saving, curriculum-based classroom ideas and teachers notes for our books – for the latter, we employ teachers to provide the notes.
- Free reading copies for teachers to assess suitability
- Author information and questionnaires / articles
- Theme lists
- Online author presentations
- Character and book-related children's activities / puzzles / quizzes, etc
- Author posters, bookmarks, etc

There are many more services, programs and organisations which we support in kind with books, by activities or by supplying books at high discount, that enhance and encourage literacy in schools and in the home. In difficult economic times, made harder by parallel importing, this area would be the first to be cut back.

5. PRICE, AVAILABILITY AND THE CHILDREN'S BOOK RETAIL MARKET

As a former export and foreign rights manager who for five years spent five months a year travelling for work, I have over the years visited many bookshops across the globe and been familiar with different book markets. The Australian book market is *second to none* for the quality and quantity of its independent booksellers, who provide a wide range of books and advise on books.

In the terms of reference, there is mention of the 30 / 90 day ruling potentially resulting in 'less availability of books'. I have comments to make on this, in which I draw on my international experience of children's books, fiction and book selling.

5.1. *Availability: range*

Firstly, I know of only one other English language market that has *as extensive access* to English language books as Australia and that is Canada. The reason is partly historic; whilst both countries are former colonies of Britain and hence have always had access to English books, Canada is on the doorstep of the US and Australia leans culturally towards the US. So both countries have 'straddled' England and the US culturally and made ourselves familiar with both cultures' literary offerings. (Canada no longer shares the advantages of the Australian market as Canada is dominated by one chain, Chapters Indigo, and there has been a decline in the local publishing industry since the Free Trade Agreement with the USA in 1989.)

In both the US and the UK (especially) there is ignorance towards each other nation's authors and a severely limited availability of each other's books in the high street *other than the bestsellers*.

There is a huge misapprehension in Australia as to the availability of books in other markets and the so-called lack of availability here, when in fact there is *far wider availability here* of world English language publications which is assisted by the depth and range of our independent booksellers.

Secondly, there is an ignorant assumption that with parallel importing a greater range of books will become available. *Actually the range of books available is likely to decrease*. The likelihood will be that book chains will import bestsellers directly from overseas at the cheapest price; US and UK university and educational suppliers will sell their own product directly into the market and remainder suppliers from all English language markets will be free to dispose of their excess stock in the market.

It is this last threat that Australian authors have every right to be especially fearful of; I have seen US editions of our own bestsellers remaindered in chains in New Zealand at the expense of our own editions and authors' earnings.

At present, the availability of books in terms of range in Australia is considerable – this is due to the marriage of good local distributors and good independent booksellers. Companies such as WBA make the commitment to import, hold stock, distribute and market the vast majority of our parent and sister companies' books. (In fact the only two books we have *never* represented here from Walker Books were books that encouraged children to pick up spiders to overcome their fear of them!)

Will companies such as ours risk that extensive commitment (approximately 300 new titles a year) in an open market? Probably not – we will be more cautious; we will have less resources to promote and market that number of titles. Without doubt there will be fewer booksellers actually to stock them.

The likelihood is that prices as a result will have to increase, both due to a loss of economies of scale (our sales, distribution and freight costs would remain but our turnover would be reduced) and to offset loss of turnover and profit.

5.2. *Availability: timing*

Ever since the introduction of the 1991 amendments to the Copyright Act, companies such as ours have been scrupulous in our adherence to the 30 / 90 days ruling. In our case, we publish most of our picture books *before* the UK and US publication dates as we publish them one month after delivery from their Far East printers, whereas by that time stock has not even arrived at the UK port. Often our books are published a full season ahead of their US publication.

With our homegrown fiction, and – increasingly – our bestsellers from the US / UK, we print in Australia. So in the case of our two most recent series bestsellers from our top-selling author, Anthony Horowitz, we have published a locally printed trade paperback edition of both *Alex Rider; Snakehead* in 2007 and *The Power of Five; Necropolis* in 2008. These were respectively published a month or two ahead of the US and simultaneously with the UK's (pricier) hardback editions.

There is more uniformity of global publication dates with bestsellers but in fact in the UK if a US or Australian title is being published at all, it is normal to publish it one or even two years behind. The same is to be said of timing in the US with regard to other English language titles.

No other government other than Australia, of which I am aware, dictates timing for the importation of titles by resident companies in the way that the 30 / 90 ruling dominates our business.

It is a fallacy that Australians get their books later than the other English language markets and so a move to parallel importing will do little to change this.

5.3. Pricing

One major issue on pricing, familiar to a publisher who is aware of the impact of book prices on our two major consumers (children and school libraries), is that the largest book chain in Australia *actively increases* our recommended retail prices across our range, and parallel importing will not change this.

However the largest single impediment to book pricing in comparison to overseas prices comes in the form of the 10% GST; Australia is still one of only a small group of countries that tax books.

Examples included in the attached spreadsheet show comparative book prices of some of our bestsellers. As can be seen in most instances it is the differential of the GST that spikes the price difference. In many instances, we have produced paperback editions whilst all other English language editions are only available in the more pricey hardcover.

In March 2009 WBA is publishing our other bestselling series The Mortal Instruments book 3: City of Glass, by Cassandra Clare, on *the same day* as her US publisher. WBA is printing locally and publishing in C format at \$24.95. Without GST that is **\$22.68**. The US publisher is selling at **USD \$17.95**, which on the RBA current exchange rate of 0.6731 US to the Australian dollar **is equivalent to AUD \$26.66**. Walker UK is publishing in *late 2009*, at least six months later than WBA.

A change away from the 30 / 90 ruling would, to me, represent 'throwing the baby out with the bathwater'. A *minimal* number of bestsellers *could* be cheaper under a system of parallel importing. But the vast range of titles would remain the same price or even become *more expensive*.

As a Board member of the Walker group I have seen at first hand the difficulties faced by the independent bookstore and the non-bestselling title trying to survive in a harsh price-driven market. In the UK, though, that market is not actively created by government policy as would be the case here, but rather is driven by discounting wars between supermarkets.

In Sydney, with a population of three million, we support nine specialist children's bookstores. In London, with a population of 11 million, they only now have 11 specialist children's booksellers (as listed by the UK Booksellers' Association³). In the UK the demise of the independent bookstore has gone hand-in-hand with the highly discounted prices of bestsellers by supermarkets and in 2006 such outlets were reported to be closing at a rate of two every

³ <http://www.independent.co.uk/arts-entertainment/books/news/at-last-something-good-to-read-for-small-bookshops-771345.html>

fortnight. Parallel importing could have a similar effect on independent booksellers here.

In the UK whilst the discounted price at retail level has increased the sales of bestsellers, the market has become so limited for other non-bestselling children's books that sales quantities have *diminished* and prices have *increased*. In some instances WBA's Australian sales of books exceed these titles' sales by our parent company and UK agencies.

Publishers and booksellers rely on the turnover of bestsellers to support the cost of publishing or stocking a diverse range of books that may not sell as well. If the turnover of bestsellers is diminished by the importation of cheaper overseas editions, these stakeholders' ability to offer choice to consumers is severely diminished.

5.4. Comparisons to the New Zealand market

I have been selling to the New Zealand market since 1985, have managed a business there since 1998 and so have been interested by references made to the NZ experience of an open market.

The NZ book market is very different to the Australian market. Firstly and most obviously, the NZ book market with a population of under four million is much smaller than the Australian market. It is a more expensive market to support. The NZ market is a book market which has always had a stronger cultural connection to the UK than Australia's. A significant difference between the Australian and NZ markets has been that NZ libraries traditionally have either bought directly from local publishers, or have bought from overseas far more so than in Australia where there is an extensive school and library supply network.

In Australia, not only do we have a number of national book chains – plus other regional small chains – but we have nationwide department store coverage and also we also have three competing mass market outlets in Big W, K-Mart and Target. However, in NZ the book market has been dominated by two chains for 20 years; Whitcoulls and Paper Plus. Whitcoulls has about 60% share of the book market. Dymocks (with only nine stores) and Paper Plus are its only competition and The Warehouse and K-Mart comprise the lone mass-market channels. The major department store chain Farmers does not have a book buyer.

NZ went straight from a closed market to an open market in 1998. The general view is that the 30 / 90 day ruling *in Australia* has made books more swiftly available in NZ, and has had a greater beneficial effect on book availability than any factor arising from the open market.

I have personally experienced remaindered US editions of WBA books being sold into NZ, thereby diminishing our authors' earnings plus our own turnover.

A number of publishers have closed their NZ operations and now supply books directly from Australia instead, resulting in a loss of local NZ jobs.

But most significant to the argument that parallel importing does not result in lower prices, *never once* have I heard of *any* publisher lowering a NZ retail price of a book in relation to a potentially competing overseas price. Furthermore, I can attest that since NZ became an open market, book prices have **increased**.

6. CONCLUSION

The Commission has already received a range of submissions that investigate the effect that parallel importing could have on authors, different aspects of Australian cultural life and the reading public. I have kept my comments to those areas where I have experience.

Our business operates very much on fixed costs. We pay a third party distributor a percentage fee, we pay a fixed rent, etc. If we were to lose the benefit of the sales of our own bestsellers, the only places where we can cut back are on our marketing budget, on our staffing levels and on our local publishing output. This would have a negative impact on Australian cultural life, on access to a wide range of books and book-related activity and on jobs in the book industry in Australia.

In Australia we experience a timely and wide range of books from overseas. We do have access to cheap bestsellers. We have a vibrant and committed publishing industry that given the size of our market achieves great things at home and abroad. I urge the Productivity Commission to advise the Australian Government on how to concentrate on building on those strengths and be remembered for enhancing our Australian voice rather than strangling it.

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Walker Books Australia
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