

## Response to the Productivity Commission's Draft Report on the Restrictions on the Parallel Importation of Books.

The Productivity Commission deserves to be congratulated for a generally calm, measured and robust draft report on the Parallel Importation Restrictions (PIRs).

There are some real weaknesses and confusions however. Allow me to address them in turn:

### **THE BACK LIST RECOMMENDATION**

Publishers will not be happy about the removal of PIRs from the back list, and I can appreciate why. Many back list titles sell in very large volumes, frequently propelled as they are by new titles from popular authors. Publishers won't appreciate being told by the Commission, on no evidence, that back list titles generally sell in 'small volumes'. Many key titles, in Australia's trade paperback format, will suddenly get keen competition from far cheaper US paperbacks. The disruption here will quite possibly be much more serious than from any removal of the PIRs from the front list. Yet the Commission claims to be concerned about disruption.

### **ASIA**

The Commission makes far too much of Asia as a potential source of cheaper textbooks if the PIRs are abolished. The fact is that educational publishers have NEVER relied on the 30/90 day provisions since their establishment in 1991. They've never needed to. New texts published in the US or the UK are published at an optimal time for the northern hemisphere academic year. They are not flown into Australia in 'commercial' quantities for sale within 30 days, as the comparable

Australian academic year starts six months later. If any copies are flown in and sold to customers they would be the exception, usually because the US or UK text is published later or earlier than normal, so catching a semester just starting in Australia. Usually a small number of copies are imported for distributing complimentary copies to academics to promote sales in six to eight months' time.

So supply from Asia could technically happen now, but it doesn't. Campus booksellers rely on the fine metrics of supply efficiencies for profitability. They are not going to throw these away for a possible few extra dollars of margin which may look tempting on paper but would be soon eaten up by supply realities. Secondly, if it did start to happen, global educational publishers would inhibit it very effectively by simply refusing to supply Asian-based wholesalers out of their Asian subsidiary companies (the only possible source of the lower-priced editions) any quantities in excess of identified Asian course needs. This happened very effectively a few years ago when certain Asian wholesalers began supplying texts online to individual students based in the US. The supply was effectively strangled, as it also was to supply out of the UK and Europe. Tertiary publishers are in the unique position of knowing the ultimate customer destination of every text. They know each adoption everywhere, and the enrolments. That's the precision of the business.

Supply from Asia is a myth. Theoretically possible, but highly improbable.

## **REMAINDERS.**

The Commission misunderstands the effect of allowing remainders in, and it simply subverts its genuine desire to enhance competition when it argues that remainders are a legitimate source of it. Sure, authors don't get a royalty on remainder sales, but imported remainders could seriously undercut the normal royalty flow from continuing sales of the regular-priced Australian edition. This is the issue, not whether the author's royalty has encompassed the remainder end of a particular

edition's journey. The critical point for Australia, without the PIRs, is the frequency, size and effect of the issue and whether it could be mitigated by contractual, 'naming and shaming', or other ways. (By the way the draft misquoted my submission on this point. I was referring to possible non-remainder or buy-back clauses in rights contracts to inhibit any sale to a remainder dealer in the first place).

## **THE 12 MONTH FRONT LIST RECOMMENDATION**

In arguing for 'prudence' on more thorough reform, the PC accepts too many assertions by the industry at face value, without subjecting them to rigorous analysis. As a result it puts far too much credence on disaster scenarios if the PIRs were abolished, and too readily accepts claims that significant local publishing activity, and thus cultural externalities, would be undermined.

It hides behind 'lack of up-to-date data' on the industry, when more data is not what is needed, rather clearer thinking. 'Better information' won't remove the claimed 'uncertainty about the significance of the impacts of the PIRs, how the industry would respond to their abolition, and how large the accompanying adjustment costs would therefore be'. There needed to be a recognition by the Commission that key players in the industry, as seen in the vast majority of the submissions, are conceptually confused on the fundamental issue of territorial copyright, how it is established, and the part played by the PIRs. As the Draft says at one point, in Section 3.2, 'by adding to what the holder of the publication and reproduction rights can control, the PIRs thus potentially add to the value that those rights might have in the marketplace'. Unfortunately most submissions are arguing for the retention of territorial copyright rather than the PIRs, as if they were one and the same. I would have liked to see the Commission address this confusion rigorously and analytically, much as it admirably did on many other issues, such as on the value and methodology of international pricing comparisons. In failing to do so I fear it has given too much weight to the possible 'disruption' that may be caused by the 'total abolition' option.

Fundamentally, there is a mismatch between the Commission's constantly repeated views of the negativities and costs of the PIRs and the timidity of their final recommendations. This is disappointing. They are confident and on firm ground in their economic analysis, but go to water in the face of specific publishing industry claims from participants that are allowed to stand without question.

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