

Parallel Importation of Books
Productivity Commission
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Dear Commissioners

Your assessment (Discussion Draft, "Restrictions on the Parallel Importation of Books") evaluates the cost of the Parallel Import Restrictions (PIRs) by considering their impacts on the authors, publishers and consumers of 'trade books'; that is printed books. But you do not consider the costs that the PIRs may impose on the consumers of electronic books.

Recommendations

(1) I urge you, in your final report, to consider the possibility that the restriction on access to electronic editions of books (specifically, the 'front list' books that are available in the US as Kindle books) is a cost imposed on Australian consumers by the PIRs.

(2) I urge you to recommend that the PIRs be abolished and that, if useful (I doubt it), the Government should increase the subsidies to 'culture' by directly compensating Australian authors of 'cultural' works for the loss of the PIRs. They should not subsidize the publishers. Nor need they subsidize foreign authors now benefiting from our PIRs (there's nothing in the national treatment obligations of the AUSFTA that requires us to subsidize US authors).

You note (Annex B, p 5 of your Discussion Draft) that the Copyright Act permits the parallel import of electronic version of a book and you note in passing that the availability of electronic editions may lessen the consumer-price impact of the PIRs on printed books (without, however, offering any data to support this claim — I accept that you say the data is not available).

A: You have not considered all of the costs of the PIRs for consumers of electronic books

You must have noticed that, notwithstanding the facility in the Copyright Act, publishers restrict the distribution of electronic versions of works that are published in Australia.

The most obvious instance of this is the refusal of AMAZON to sell documents for the very popular Kindle reader to Australian consumers, among others, apparently because the (global) publishers refuse to license electronic versions of their books for this market.

The costs of this restriction to consumers in Australia include:

1. higher prices (Kindle books are sold at a discount to even the discounted print versions on AMAZON);
2. lack of amenity (the reason consumers want a Kindle at all is that it offers them a more convenient way to access books and a different set of 'book' services not available in the printed format);
3. higher acquisition costs (the convenience, speed of fulfillment is greater in the case of Kindle books than in the case of printed books).

B: The restriction on sale is due to the PIRs

What incentive would the publishers have for this restriction except that it threatens to cannibalize the rents secured to them in Australia by the PIRs in addition to the rents secured to them by Copyright? Cartel rents? They may be acting as an 'informal' cartel (as the publishers of DVDs do when they attempt to enforce their 'regional' replay restrictions). But if that were the case, you and I would predict that one or other publisher —with the connivance of AMAZON—would defect ('cheat') just as [EMI defected](#) from the copyright and DRM restrictions imposed by other labels selling through the iTunes store.

Alas, after more than a century of the international book-publishing cartel—and despite the apparent end (in the 1970s) of formal restrictions such as the 'British Traditional Market' scam—the incentive provided by the PIRs (in Australia, the UK and elsewhere) still seems to provides sufficient incentive for the publishers to cartelize the market by restricting access to high quality electronic versions of books published in Australia.

Two further reason for thinking that this restriction is motivated by the rents in the PIRs:

1. AMAZON does in fact sell some electronic books that are available in Australia (www.mobipocket.com). But these are 'discount', remainder-list and 'special interest' books. They probably never figured on the 'front list' that is especially protected by the PIRs, as your Discussion Draft concludes.
2. Similar restrictions apply to the sale of Kindle books in the UK where other market conditions are different but, as your draft notes, there are analogous laws restricting parallel imports.

C: Electronic books and printed books are competitive products

It might be argued that the rents due to the PIRs could not be affected by the sale of electronic books because they are not directly competitive products. My allegation that concern for these rents explains the refusal to sell Kindle versions of 'front list' books in Australia could not be true if the electronic and printed products are not competitive. The sale of the Kindle versions would not, in that case, undermine the value of the PIRs on the printed books.

But I contend that the Kindle product is strongly competitive with the printed version of the books. Indeed, this is the design objective of the Kindle device and it has been apparently very successful in meeting that objective (the first version of the Kindle sold its entire production run very quickly).

'Non-competition' is not a successful objection to my contention that the PIRs explain the restricted access to Kindle books.

D: Remedies

You suggest that the PIRs should be limited to 12 months in order to balance the rights of consumers and the 'cultural' benefits of the PIRs. I do not agree. Your report acknowledges a public benefit ('cultural benefit') due to the PIRs. But you underestimate, for reasons outlined above, both the costs to the consumer and the rents accruing to the publishers from the PIRs.

The publishers already receive an excessive copyright benefit (especially since the absurd 'life of author plus 70 years' copyright term was adopted to comply with the Australia-US FTA). This benefit, too, has been justified on 'cultural' grounds. Why is there a need for any PIRs to supplement the rents available from copyright?

With best wishes,

A handwritten signature in black ink, appearing to read 'Peter W. Gallagher', with a stylized, flowing script.

Peter W Gallagher
Trade and Public Policy Consultant