

9 April 2009

Parallel Importation of Books
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioners,

Thank you for the opportunity to discuss the Discussion Draft on the Restrictions on the Parallel Importation of Books at the industry round table in Melbourne on Tuesday 7 April. My further thoughts are as follows:

Lack of sufficient data

Throughout the report, the same phrase appears often: that there are insufficient data to fully describe and analyse the books market (pXVI), that there is a lack of contemporary and comprehensive data on the books market and the local industry (p 7.3), and many other examples. Once Australia's vibrant and successful publishing industry has joined car manufacturing and film production as being no longer viable without intervention it will be too late. There is a reason the United States and the UK have not made these same changes to their publishing industries. Further, without sufficient data to establish a baseline and ABS data some years away, how does the commission propose to measure the effects of any changes in five year's time?

'Leakage' of PIR benefits to foreign authors

The report presents 'leakage' as a uniquely Australian issue and something that must be fixed. Even the term chosen by the commission, 'leakage', is prejudicial. In fact this is a normal and world-wide part of the international publishing industry that has always been defined by territories, and is simply compensation for authors for the transfer of their rights. While the commission has deemed the PIR stance of other countries to be an irrelevant point (page 7.5), it is disingenuous to consider 'leakage' to foreign authors of our PIR regime without considering the impacts of the PIR regimes of our English speaking trading partners. Further, as a condition of the Australia-US Free Trade Agreement effectively rules out discriminatory treatment in regard to non-Australian authors (Box 7.4), an international context is indeed relevant to the Commission's deliberations.

Again, these proposed PIR changes are unilateral with respect to our largest rights-trading partners and, rather than economically analogous with removing tariffs, are the equivalent of applying tariffs to Australian publishers and writers working in an international market. It is not the PIRs that are an intervention in this global trade, but their prospective removal.

Disincentive for export

One of the more counterintuitive points raised by the report is that publishers could effectively increase the PIR period by 'holding back the overseas release for an appropriate period' (page 7.17). It is surreal to think the Commission is discouraging successful exporters of intellectual property. In many other industries, successful exporters are actually encouraged as a source of foreign earnings and there are numerous federal programs devised to aid them.

Timing of the proposed changes

World publishing is on the brink of a revolution. We are all watching, waiting for what we call publishing's 'i-pod' moment--the moment a digital reader seizes ascendancy. Kindle files are now for sale for \$9.95 US on Amazon.com, and there is considerable consumer debate that this price is excessive and must drop (see http://www.amazon.com/tag/9%2099boycott/products/ref=tag_tdp_bkt_istp_4) Reducing the viability of publishers with PIR changes will only add to an uncertain and tentative business future. Books that can be downloaded are with us now. Business models in publishing and book retailing must and will change anyway.

The cost to Australian authors

The importation of foreign stock and remainders would be a financial disaster for Australian authors. My example: In the UK, my publisher has some thousands of surplus copies of my book, *Addition*, which they intend to remainder (largely due to an ongoing dispute with Amazon.co.uk that has seen my book unavailable there for eight months). If these copies turn up in Australia, my home market, I would earn effectively nothing. At the same time, here at home *Addition* has been long-listed for the Miles Franklin Award and my publisher has produced a handsome new edition, which, he tells me, is selling strongly. I have not been compensated in any way for those remainders negating my home market. I can write another book on my Australian earnings but I can't write another book on nothing, which is what I will earn if those remainders cannibalise my sales here at home. This does not provide me with the 'just reward' as stated in the Copyright Act, especially as retailers would continue to make a healthy profit (and, likely, an even larger margin) from these imported copies. My productivity at least would be immeasurably damaged.

My case is not an isolated one. Even without considering remainders, the royalty paid on an overseas edition is far less than a home edition, as the commission acknowledges. The report also acknowledges the possibility of 'less opportunity for some Australian authors' (page 5.7) and that 'authors would generally face reductions in their income' and 'lower royalty payments' (page 5.10). Australian authors don't make a lot of money. Authors, particularly those who have been successful overseas, will wear a disproportionate cost should these PIR changes proceed. Aside from the financial losses, Australian authors will lose the ability to dispose of the results of their labour, their intellectual property, in whichever way they see fit. This immeasurably damages us.

Back list vs front list

While the report acknowledges that 'back list titles can sometimes return to the front list--if for example, the author wins a major literary prize, or if a film version of a book revitalises demand' (page 7.17). In fact, this is the way that many literary prizes are set up, precisely to lengthen the selling cycle of a book. The Miles Franklin and the Prime Minister's award for fiction, as well as many others, specifically judge books in the calendar year following their release. Even shortlisting, or long-listing in the case of the Miles Franklin, can have major effects on the sales of a book. As publishers have no certainty of benefit from sales of a backlist title, perhaps they will cease to even nominate authors for major literary prizes, a potential result that will severely change the written culture of this country.

Similarly, the release of a film will boost a book's sales. Neither of these are rare events but part of the fabric of publishing. Again, the commission seeks to disproportionately punish successful authors.

Benefit vs detriment

I do not believe that the draft report displays a convincing case for substantial or even minor community benefit. When considering the comments of the printing industry that, due to lack of economies of scale, some books will actually be more expensive, and also the possible disinclination of retailers to pass on any savings, any benefit to the Australian community is at best unproved and at worst unlikely. Yet the potential for substantial cultural damage at a quantum higher than that realised by the commission is very real. The commission is aware of these cultural arguments: where are the successful children's writers of the future to come from? Will a reduction in returns to authors and publishers create a disincentive for the writing and publishing of new Australian work? Will a swamping of US-published books damage the preservation of our language? We have much to lose by these proposed changes, and very little to gain.

With thanks for your consideration
Toni Jordan