

The Productivity Commission
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This submission is written in response to the commission's Discussion Draft released on 20 March 2009.

The commission's draft report is a botched job: it is unsafe, unsound, and unreliable. It demonstrates fundamental ignorance about the industry it has been investigating, it makes findings that are not supported by the evidence it adduces, and it makes recommendations that it recognises would damage the interests of Australian authors, booksellers, printers, and publishers — all because it has an *a priori* belief that a greater good would result from the loosening or abandonment of parallel-import restrictions.

Ultimately, the draft assumes what it is incapable of proving, and relies on that assumption to recommend draconian changes to the existing regulation of a successful and important cultural industry.

The commission pays lip-service to the submissions it received (over 95 per cent of which supported the retention of territorial copyright) by quoting widely from them and then ignoring them. It masks its inadequacies by using a language that only economists could love ('cultural externalities'), while proving tone-deaf to the inspired prose of writers such as Tim Winton and the thoughtful, honest writings of individuals with decades of experience in the industry.

What is worse, the draft report doesn't face up to the fact that the case for the prosecution has collapsed. Of the two grounds for the inquiry — supposed problems with the ready availability and the prices of overseas-originated titles — the draft report effectively abandons the first charge.

Of the second charge, after labouring mightily, the commission has produced a mouse: it demonstrates that local book prices are competitive at the average \$US–\$Australian exchange rate of the past decade. Neither the supposed killer example of New Zealand’s experience after it abandoned parallel-import restrictions, nor the distortions of the Dymocks-led ‘Coalition for Cheaper Books’ turn out to be persuasive. The commission has been forced to recognise that there is no supporting evidence for the second charge, either.

Even so, the commission avers that parallel-import restrictions must be responsible for ‘an upward pressure on prices’. Why does it say this? Because it ‘knows’ on *prima facie* grounds that this is what happens when free markets are impeded. In the absence of forensic evidence, it relies on supposition and suspicion as a basis for proceeding.

This begs the basic question, of course: why call for submissions, at all, apart from fulfilling the need to demonstrate that due process has been followed?

Let there be no mistake about it. The case for the commission’s prosecution of the industry boils down to a pre-existing belief that PIRS produce a *tendency* to raise prices and hence to cause economy-wide damage. This belief underpins the commission’s imperviousness to the evidence, and explains its insouciance about the adverse consequences of its draft recommendations. It is simply not interested in the details of what it regards as collateral damage.

Not surprisingly, the commission’s recommendations are awesome in their otherworldliness. They reflect an almost complete lack of feel for what goes on inside the lowly paid, high-risk, low-reward publishing industry: the long-term investments it makes in authors, employees, and titles, and its irreplaceable role in transmitting culture and a sense of community to its readers and participants. The commission regards publishing as akin to textile manufacturing, albeit with an extra ‘cultural’ element. In its eyes, an industry is an industry is an industry.

The commission cannot even bring itself to say straightforwardly that the beneficiaries of its recommendations — the US and the UK — protect their

national cultures and publishing industries by prohibiting parallel imports. (In post-draft discussions, the commission dismissed this high-mindedly as an example of what not to do if one wishes to follow free-market principles.)

And because the commission does not understand the industry, it feels able to recommend a re-engineering of it that, as it happens, would make everything worse. Even then, if the industry still has a pulse, the commission proposes coming back after five years and completing the process of 'liberalisation'.

The commission's central recommendation to maintain PIRs for twelve months is not just unjustified; it is inept. It is based on a fundamental misunderstanding of the relative revenues that authors and publishers derive from front-list and back-list sales. And it is a figleaf for a convoluted, backdoor abandonment of territorial copyright that would, in the process, distort the industry into a shape that would be unrecognisable locally and internationally.

This is death by a thousand cuts. The commission, in effect, is urging the national government to bring into being a publishing industry that would be much smaller, with a reduced local list, and which printed fewer copies of each new title (in an irony typical of the draft report, these lowered print-runs would increase unit costs and hence retail prices). As a result, independent publishers, local authors, and literary agents would face diminished prospects, and lowered incomes and revenues; some independent booksellers would be forced out as the large chains got even bigger and imported more mass-market titles; local book-printing would decline, and printing jobs would be exported; and, of course, there'd be a significant rise in unemployment.

As well, the decades-long battle for the splitting of Australian territorial rights from UK and Commonwealth rights would be over. Australia would revert to being a post-colonial dumping ground for US and UK 'product', where what we get to read would become more dependant than ever on the whimsies of export-sales departments in New York and London.

This is an impressive amount of destruction to wreak, on the sole ground that the commission believes that the retention of territorial copyright causes a tendency for prices to rise. One wonders what it would have recommended if it had any proof. Nationalisation? Transportation to England with forced labour?

The truth is that the current regulations work remarkably well, but that the commission is constitutionally unable to face the consequences of this fact. Its job, after all, is to recommend reforms, not to award commendations for good performance or to preserve the status quo. Throughout its draft report, it is apparent that the commission was always going to recommend change of some kind, come what may. Its only problem is that the gap between the evidence and its recommendations requires a leap of bad faith.

The draft has succeeded in only one thing: it has aroused the fury and scorn of the entire publishing industry and its stakeholders, and among many readers and those who care about the place of the written word in Australian culture.

It is possible, of course, that the commission will want to change course in its final recommendations. It may revert to recommending the total abandonment of territorial copyright, or it might be tempted to fine-tune its grand design for Australian publishing. Either approach is bound to have catastrophic consequences.

Whatever it ends up recommending, I believe the commission has destroyed its own credibility on this subject. Its discussion draft demonstrates the folly of subjecting a complex cultural industry to the tender mercies of a neo-liberal economic inquisition. It is hard to imagine that a Labor government, let alone a national parliament, could accept such devastation being wrought on the flimsiest of pretexts and for such non-existent or marginal benefits.

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