

SALLY MILNER PUBLISHING PTY LTD

**COPYRIGHT RESTRICTIONS ON THE PARALLEL  
IMPORTATION OF BOOKS**

SUBMISSION in response to the  
DISCUSSION DRAFT

15 April 2009

Thank you for the supply of the Productivity Commission (PC) Discussion Draft.

Sally Milner Publishing is **strongly opposed** to the recommendation that will have the most significant impact, that being the proposal to shorten the period of PIR to 12 months.

Implementation of this change will result in the intended benefits to consumers vanishing from view as they “fall between the stools” of claimed price reduction on one side, and at least similar book availability on the other. The intended benefits will not generally materialize as expected by the PC, but the changes if implemented will damage Australian creative publishing and printing, probably irreparably, in the process.

The reasons for our view are as follows:

### 1. **The Worst of Both Worlds.**

The 12 month limit will ensure that the negative effects of an open market are achieved. Cultural externalities (ref Draft Overview XXIII and XXIV) will almost certainly **be** lost because a 12 month stay on implementation of an open market is manifestly insufficient to justify the necessary investment in new material by those who will have previously made that investment. How does the PC come to conclusion that most of an investment in a published work is recovered in the first 12 months? In our case we can assure the PC that it does not. Most of our published works require significantly more than one year to recover costs, and even more time to contribute a profit. Some never do make a net return and any riskier titles will certainly not be published by us under such a scenario as we become far more risk averse.

The PC Draft does not detail the benefits that it sees in the open market to which it clearly aspires. However one can assume that one such benefit forecast by the PC would be increased (or at least equivalent) availability at perhaps reduced prices after 12 months. These positives are most unlikely to be achieved. For those titles that do make it through the publishing maze, and are published in Australia, reduced prices after 12 months (on non-remaindered stock) won't happen because of high and growing freight cost of the resulting smaller imports. However, availability of suitable material will, on balance, be reduced because titles that are published thus temporarily retaining the PIR's will be printed in reduced quantities. After 12 months, supply to the market will often be dependent on *ad hoc* imports, which may or may not be legal editions that conform to the 12 month expiry imperative that is contemplated. The more likely result amongst those wishing to act legally will be confusion as to real landed cost, and source of supply. In short, confusion will reign in the legitimate market!

## 2. No level playing field.

The 12 month proposal would create a very lop-sided playing field indeed. Our main publishing trading partners, the US and the UK both have PIR's embedded in their copyright legislation (ref Draft 4.15). Unilateral elimination of PIR's in Australia, even after a paltry 12 months, will simply encourage US/UK exporters, and re-exporters from other regions (eg. Asia) to exploit the then open Australian market for their editions, whether legal or not, whether originally Australian authored/published or otherwise, whether higher or lower in price, comfortable in the knowledge that Australian exporters cannot legally reciprocate with export of our own editions to their markets.

Who would make a risky local publishing investment under those circumstances? Where is there a net benefit to Australian consumers in that outcome? Those investing in local publishing would often be "on a hiding to nothing".

## 3. The threat of Remainders flooding the local market.

Clearly Australia would become a dumping ground for cheaper, often lower quality editions under the proposed changes. Despite the potential and occasional price reduction that Australian consumers might access, the PC acknowledges that remaindering may not be desirable for many market participants. One remedy, it is suggested, would be to delay publication overseas thus reducing the risk of remainders from re-entering the local market (ref Draft 4.17).

Of all the spurious conclusions reached by the PC in this Draft, this one surely "takes the cake". This suggestion is completely fanciful for the following reasons-

- (a) Australian publishers struggle to license Australian material or sell Australian editions overseas amidst huge competition from foreign publishers, all competing for limited resources and budgets. To suggest that it is remotely feasible to dictate when the licensed edition or Aussie edition will be published is "pie in the sky". Foreign publishers advise when the title will be slotted into their program, and that will almost never be well after Australian publication date. They want fresh material.
- (b) Should a publisher actually be successful in arranging for delayed publication overseas, the likelihood of remainders entering the local market may actually increase because once published overseas it may be more "dated" and so less saleable at full price. The result.... remaindered books in Australia where the local market may still have some appetite.
- (c) Even when foreign **publishers** with whom contracts with Australians have been entered into attempt to enforce the contractual obligations of their non-Australia partners not to re-export into Australia, such obligations are not shared by the many **wholesalers and dealers** who are active in the world

market. As third party players, they can and will sell cheap books into any market that they can find.

It is doubtless that implementation of the recommended change to 12 months for PIR's will result in more remainders of Australian material in the form of foreign editions being available locally. This will not just result in the occasional lower prices, but greatly reduced availability at any price, as new title development is reduced.

**Conclusion:**

Under the circumstances, our company would critically curtail its investment in local editions of works by both Australian and overseas authors, to the detriment of all participants in the market, including consumers.

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Managing Director