

Dear Commissioners,

## **Re: Productivity Commission Discussion Draft March 2009**

Thank you for the opportunity to respond to the Productivity Commission's discussion draft.

While I appreciate the complexity of the issues and the enormous effort required to approach the industrial realities before the Commission, I confess that am disappointed as much by the evident foundations of the Commission's thinking as I am by the mooted reforms themselves.

The PC asserts that current provisions put 'upward pressure' on book prices, but at no point does it actually demonstrate this to be the case. While the report begins with commendable caution regarding this theory, and duly acknowledges the dearth of statistical data from which it may be safely deduced, it gradually settles into a firm but largely unfounded assertion from which all its recommendations proceed.

Nowhere does the PC outline in any convincing manner that under current provisions the Australian book consumer is disadvantaged and anxious for change. It seems to *feel*, however, that this simply must be so, that the current provisions are improper and must be reformed. Such a *feeling* is difficult to test and even more problematic to contest. The Commission's draft findings fail to describe or table widespread consumer complaint about book pricing. The only substantial submission making a case for the surrender of territorial copyright was not from a grass-roots consumer group, but from the Coalition for Cheaper Books, a consortium of powerful merchants. It identifies no consumer groundswell for change.

The Commission makes it clear that it would prefer to execute more radical changes, that it views 'liberalisation' as both virtuous and inevitable, but that it is constrained by an absence of data on the one hand and more troublesome 'externalities' like culture and politics on the other.

I appreciate the Commission's efforts to understand the potency of economic 'externalities'. Given that those externalities are more or less the meaning of my life, you

can imagine my gratitude that they have not been summarily ignored. I realise that in an encounter like this, a policy meeting of the technical and the intangible, a measure of mutual incomprehension is inevitable. But I did not foresee the prospect of having territorial copyright presented as a means of maintaining provincial monopoly, of exploiting the consumer, of letting the national side down and causing economic 'leakage'. Neither did I imagine that the Commission might present territorial copyright as a local aberration, as a backward, provincial exception to the rule in international publishing in the English-speaking world. At times, reading the discussion draft, I felt like a worker whose claim for fair pay has been construed as a threat to the wellbeing of the poor, suffering oligarch and his entourage. Dear Commissioners, my head was spinning!

Territorial copyright is not an Australian aberration. It is not a form of special pleading and neither is it a peculiar species of protectionism as your report implies; it is the international norm, the convention in English-language publishing. American and British writers assume it as a birthright. It merely ensures that a creator is fairly remunerated at home and abroad for original work. It provides fair royalties in every market. It acknowledges the great individual labour and personal risk of the primary producer. For Australian writers, the hard-won acceptance of territorial copyright has brought some symmetry and fairness to trade in the international market, and it reflects our nation's progress beyond colonial status. The benefits of this convention have not been limited to mere 'externalities' because publishers, booksellers, printers have flourished commercially under its terms. Under territorial copyright the readership for books has also grown. Put simply, people continue to spend discretionary income on books in this country. Territorial copyright works and the submissions to your inquiry show unequivocally that most respondents approve of it without reservation.

It is disheartening to have the Government's research and advisory body presenting copyright as unfair, restrictive, illiberal and destined to be obsolete. The segmentation of markets is discussed in remarkably pejorative terms, almost as conspiratorial behaviour designed to fleece the consumer. I find the characterisation false and objectionable. International recognition of territorial copyright is not, as the Commission asserts 'cushioning domestic copyright holders from at least direct international competition'. The opposite is the case; it puts them into competition on equal and realistic terms in the international market. Once relegated to the colonial margins by economic and cultural irrelevance, copyright holders are now closer to being equals. The significance of this achievement, in terms both economic and 'external', is worth remembering and will be defended.

The Commission is anxious to inject more 'competitive pressure' into the market. Although it is at pains to point out that the conditions and conventions in foreign markets in English are outside its purview – including the degree to which those conditions will be uncompetitive or even unfair or unproductive for Australian citizens as a result of any changes – it is quick to discount certain plausible reforms on the basis of asymmetrical trade arrangements with foreign powers. Again, the head spins. It is bewildering to see a government body recommending that the nation's writers be

returned to the colonial dispensation they took decades to fight free of while it remains sanguine about ceding cultural and commercial rights to the advantage of foreign corporations. I regret that the Commission should consider such concerns to be only of 'superficial appeal'.

It saddens me to know that my decades of work and the achievement of a long-selling backlist - an income, no less - might only add up to 'apparent self-sufficiency'. It would seem that the self-sufficiency of an American or British writer who enjoys territorial copyright is somehow more legitimate than my own. The American or Brit who has rights under copyright conventions, is a real player, while I am, apparently, a mendicant. The existence of territorial copyright does not mean that an industry cannot 'thrive on its commercial merits' in this country or any other, and it is a pity that the Commission insists on viewing copyright as exclusively contiguous with protection and subsidy.

The Commission's analysis seems to conflate the interests of publishers and retailers with those of the primary producers. Copyright holders – *writers* - are more vulnerable than the discussion draft implies. I am disappointed that the analysis seems to give equal weight to the interests of discount chains, large publishers and sole-trading writers. The fact is that territorial copyright is integral to the survival of the weakest and most vulnerable participants in this industry. Writers do not *find* books in the way that miners discover and exploit ore. They *make*; they create something that cannot be repeated at will. Any analysis that implies equivalence between this activity and those of non-creative industries is inherently flawed.

A creator is infinitely more vulnerable than a discount chain. To large retail consortia, creators are mere suppliers that can and will be replaced when they fall by the wayside. Every righteous competitive pressure will be brought to bear to enhance market share. The diminution, or perhaps even the abolition of something as apparently anachronistic as territorial copyright will obviously not trouble the retailer as much as the writer.

The Commission's recommendation that booksellers be able to aggregate overseas orders strikes me as sensible. I am interested in the Commission's analysis of the differences between trade and educational publishing and believe that there may be scope to treat these sectors more discretely in the future.

On the evidence presented, I believe that removing territorial copyright on backlist titles is a mistake and a destructive one at that. I simply don't understand the logic behind it except as a means to drive a reforming wedge into the industry while the opportunity presents itself. Perhaps I am too cynical, but I am disturbed by the tone of advocacy in the report, given the thinness of its statistical, historical and conceptual underpinnings.

As a person who primarily makes his living from backlist royalties, I object to the recommendation on several grounds. It is based on a misunderstanding, an arbitrary distinction between frontlist and backlist based on time rather than currency, format and the peculiarly unpredictable life of an individual book, and it therefore promises to be a

blunt and needlessly punitive instrument. For writers like myself who have almost always published first in hardcover and second in paperback (often in two formats in paper, sometimes concurrent), a book is 'new' and 'frontlist' for a period longer than 12 months. It has currency long after the arbitrary year.

It is every writer's hope to sustain healthy sales and fair returns from first release onwards and to gradually build up a live, in-print backlist. This is the main form of financial independence available to any writer. Sadly, very few writers Australian or otherwise manage to achieve this, but they aspire to it the way every worker aspires to promotion, higher wages and a decent payout in retirement. The Commission's recommendation will make such an aspiration impossible. It will remove a crucial incentive and create more troublesome 'mendicants'. It will entrench a culture of disposability, of short-term goals and thinking, increase pressure on titles to perform in ever-more-unrealistic timeframes, and discourage writers, agents and publishers from acting collaboratively. Australian writers will once again be reduced to the status of dilettantes and part-timers crippled by low morale - the 1950s all over again. Australia will revert to being a British publishing territory.

Such a recommendation punishes a publisher for success at home and it offers easy rewards to foreign publishers who can offset failure in their own market. The PC's report dismisses the concept of 'piggybacking' without seeming to understand it sufficiently. Because of export royalty provisions, it punishes the author most of all - the writer emergent and the writer established.

Speaking for myself, the recommendation creates a quandary. Should the reform proceed and my foreign publishers be allowed to piggyback on the promotional expenditure of my Australian publisher, the Commission will essentially be providing easy new territories for offshore publishers at great cost to myself. My overseas publishers will begin to print specifically for export here in all editions. Their dumping will not be restricted to remainders because the Commission's policy will have relieved them of commercial, competitive pressure to sell my books in their own market. In effect, the PC will be subsidising the UK and US trade and my reasons for maintaining an Australian base will be completely undermined. My territorial copyright will have been compromised, taken from me by an agency of my own government. My income will be considerably reduced. My publisher will be expected to publish my backlist for the same price at which foreign publishers offload them *outside their own territories*. The Commission will make my position here uncompetitive and untenable.

The Commission's reform will rob me of a fair royalty at home, the very basis of fair play and wage justice in our industry. Under export provisions this will mean cutting my wages by at least half. As well as paying foreign tax on royalties in each of the countries now publishing my work, (a form of personal 'leakage' I'm long accustomed to) I will pay foreign tax on editions exported to Australia. That means I will be taxed extra and paid half as much. Income stripped from me will go offshore and the PC cannot even guarantee that such a sacrifice will produce cheaper books. You may as well increase my Australian income tax to 75% and be done with it, for that will be the

outcome. The inference being that my current rate of pay, my royalty per book, is improper - or that the hundreds of thousands of Australians who currently buy my books are being systematically exploited. The message the PC will be sending me as a citizen is that I am no longer worthy of fair rates of pay, that I do not deserve the same industrial rights as a British or American writer. If this is the first of the Commission's vaunted reforms, then clearly I will be coerced into moving my business offshore. In order to secure fair terms and to save confusion and aggravation I will be forced to publish primarily from London or New York like the good old days when Australia was viewed as a backwater. In strategic terms, why would I wait another five years if I can already see which way the policy wind is blowing? Even as I do the numbers, my mind is reeling with externalities.

Dear Commissioners, I have fought these cultural and economic battles for decades, as I outlined at regrettable length in my initial submission, but that war of attrition was against foreign corporations and a colonial mindset, not agencies of my own government. Should the PC's recommendation proceed, and should this be followed in time by further measures it has indicated a preference for in its draft report, the prospects for writers in this country will be diminished and my faith in its culture will be, for the first time in my life, uncertain. A vulnerable cohort of Australian workers will be further and needlessly disadvantaged. A government that accepts such recommendations will create a new generation of exiles and supplicant dependents and will have undone generations of good work. It will have undertaken an act of cultural vandalism.

It is my view that the Commission's inquiries have not produced the data required to make safe recommendations on the future of Australian publishing. It alarms me to see the PC concede that while it has unreliable and incomplete data upon which to make a determination, it remains eager for reform nonetheless. The summary of the PC's draft findings amounts to little more than 'poke it and see what happens'. It is my respectful contention that the PC is still uncertain about the creature it would like to poke, and that it requires a lot more knowledge from which to make a safe determination about the likely consequences of such a poking. My hope is that prudence will prevail and that as a result territorial copyright will continue to be respected in Australia.

**Tim Winton**

15 April, 2009