

NAM LE

RE: RESTRICTIONS ON THE PARALLEL IMPORTATION OF BOOKS

SUBMISSION TO PRODUCTIVITY COMMISSION

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As a published author, my financial interests will be detrimented if the Commission's recommendations in its Discussion Draft (the "Report") are enacted. That much is admitted on pages 5.10-11 of the Report, which states:

To the extent that removal of PIRs resulted in lower prices, authors would generally face reductions in their income. Lower RRP's in the domestic market would translate into lower royalty payments. Authors would also receive lower 'export royalties' on any copies of their books that were imported into Australia from overseas. Further, given that copies of books sold as remainders generally return no royalties for Australian authors, any importation of remainders that displaced rather than supplemented existing sales would have reduce the total income earned from the books concerned.

The vast majority of Australian authors cannot afford to write full-time; most of those who choose to do so already live on marginal incomes. As local royalties are orders of magnitude greater than export royalties – and authors receive no royalties for remainders – it seems crucial to acknowledge that the Commission's recommendations, if enacted, would unquestionably reduce the income stream of Australian authors – an income stream already significantly lower than average. This will have the effect, as the Report also concedes at various points, of reducing the size and activity of the Australian publishing industry. No Australian writer will be immune: some may stop writing (while others are dissuaded from starting), some may find that the embattled local industry is unable or unwilling to publish their work, some may tailor their work and efforts toward overseas publishers. The follow-on effects to the literary and artistic culture at large are degenerative and obvious – the Report concedes all this as well.

These are the costs. It seems to me that it would be irresponsible to enact the Commission's recommendations unless the case is convincingly made that the benefits from so doing will outweigh these costs.

I've been reluctant to participate in this debate thus far because I'm a reader as well as a writer. Although my financial stake in the PIRs system is far greater as a writer than as a reader, I've assumed that to upset a system that is, by all accounts, in good order, there must be compelling countervailing evidence of benefit to readers. Having read the Commission's Report, however, it is clear that such evidence is inadequate at best.

Indeed, the Commission itself concedes the inadequacy and unsatisfactory nature of its evidence. On page xvi, the Report states:

The Commission has found that there are insufficient data to fully describe and analyse the books market. The ABS last surveyed the publishing sector in 2003-04. There is particularly a dearth of data in relation to the educational and professional books sector, and international online sales.

On page xix, the Report states:

Measuring the magnitude of any actual price effects caused by Australia's PIRs is problematic. Indeed, the Commission has had to draw mainly on qualitative evidence together with theory, as well as some quantitative evidence, to gauge these effects and has not put a figure on them.

In short, the Commission has not found satisfactory evidence that the current system restricts availability of books in Australia. It has not found satisfactory evidence that books are in fact more expensive in Australia than elsewhere. It has not found satisfactory evidence that any savings made by retailers under its recommendations would be passed on to customers. It is persuasive to me that not only are the Commission's recommendations opposed by the Society of Authors and the Australian Publishers' Association, they are opposed by the Australian Booksellers Association.

In its assessment of the net community impacts of the PIRs, the Commission identifies three categories of benefits and costs that do not 'wash out' (page xx). On the debit side, the Report identifies these two drawbacks of the PIRs:

- 1) The 'leakage of income to those overseas authors and publishers whose works are released in Australia and benefit from the PIRs'; and
- 2) The risk of 'inflated cost structures and inefficiencies in parts of the supply chain' based on the proposition that PIRs '[lessen] the need for the local books industry to operate at 'best practice' (page xi).

On the first point, I would like to know what legal or ethical principle pertains such that Australian authors and publishers should be penalised because non-Australian authors and publishers are benefited? And logically speaking, if our goal is to ensure PIRs benefits are properly distributed whilst minimising net community impact, wouldn't it be more logical to focus on stanching the 'leakage' of income to non-Australians rather than suppressing the income to everyone? Has the Commission considered that the stanching of such leakage properly falls under the purview of reciprocal taxation arrangements between Australia and other countries, which arrangements provide perfect instruments to withhold part of the income afforded overseas authors and publishers from the PIRs?

On the second point, it should first be noted that 'best practice' is, at best, a misleading term, as the Commission itself concedes (on page xxii) that:

[U]p-to-date and comprehensive data on the books sector is not readily available, and gauging some of the impacts of the PIRs — for example, in terms of prices, industry activity and cultural externalities — is inherently difficult.

This difficulty should then be compounded by the difficulty (also acknowledged in the Report) of conducting comparative analyses with other markets. In light of these difficulties, the Commission's imputation of 'inefficiencies' caused by the PIRs requires further explanation and support.

It should also be noted that the concept of 'best practice' in the absence of PIRs is meaningless, as none of the other English-language book markets allows parallel importation. The US and UK have never contemplated allowing parallel importation, and Canada has recently strengthened its copyright provisions. Even a free-market 'best practice' posited as hypothetical (and the Report fails to meet even that threshold) would quickly run into the very real disadvantages in the real copyright marketplace. The Report is vague on this issue at best, silent at worst.

These points highlight, I submit, the fundamental flaw in the Report's logic. In assessing its policy options, the Report states:

In view of the benefit-cost balance sheet set out above, the case for the longer term retention of PIRs — in either their current or modified form — must be founded principally on the cultural externalities they generate for the community. In the absence of significant externalities, and with core copyright protection still in place to provide incentives for creative endeavour per se, the leakage of income overseas and resource inefficiencies associated with the PIRs would provide a persuasive case for their outright abolition.

First, it is *not* clear at all that the case for PIRs 'must be founded principally on the cultural externalities they generate', as the Commission has not demonstrated a satisfactory accounting of the financial and systemic costs and benefits of the PIRs. The Report often admits as much. Second, the term 'core copyright protection' obfuscates the very point the Report was tasked to investigate: whether the reduction of the current Australian copyright term from life plus seventy years to twelve months really constitutes 'core' protection. Third, the items on the 'debit side' of the equation — leakage of income overseas and resource inefficiencies — have not been adequately supported, as we've seen, by either empirical data or causal justification.

Finally, the above formulation, by way of its tendentious logic, assumes — as the Report repeatedly does — that the onus should be placed on justifying the continuation of a thriving system rather than making the case for its transformation or abolition. On page xxii, the Report states that:

Even if the PIRs were judged to provide a net benefit to the community in the light of the cultural externalities that they support, the case for retaining the PIRs would still depend on there being no alternative policy instrument that could more efficiently support culturally valuable Australian writing activity, and thereby secure these externalities.

But if indeed there are 'debits' to the PIRs, shouldn't we first seek alternative policy instruments to address these (eg withholding taxes for Australian-generated income remitted overseas, finding ways to measure and address perceived 'inefficiencies'),

rather than immediately upending the system and thereby being certain of harming local authors, publishers, and book culture?

We've discussed the points on the debit side of the Commission's assessment of the net community impacts of the PIRs. On the credit side, it acknowledges (on page xi) that PIRs support a 'larger publishing industry and, as a consequence, more Australian authorship [and] a greater portrayal of Australian events, as well as stories as seen through Australian eyes.' It concedes that 'The dissemination of Australian culture can have a range of social and educational benefits' (before going on to recast these benefits as 'externalities').

Later, on page 7.2, the Report states: 'By increasing the monetary returns available from rights trading and local publishing activity, the PIRs enable higher output of locally published titles, resulting in the publication of a greater number of authors and greater demand for the services of the local printing industry.'

These facts, then, are clear and undisputed: the PIRs enable a larger, more active book industry in which authors are better remunerated and Australian culture more effectively disseminated and shared.

Abolishing or weakening the PIRs system will jeopardise this – to what extent it is unclear. On page xxiii, the Report states that abolition could have 'material adjustment costs'. It goes on to warn that 'were it subsequently judged that the ensuing contraction in industry activity, and any associated loss of cultural externalities, had been excessive, it could take a considerable time to reverse.' That is, misjudging the cost-benefit calculus will result in further, unquantifiable costs.

At the beginning of this submission, I asserted that it would be irresponsible to enact the Commission's recommendations unless the case were convincingly made that the benefits from so doing would outweigh the costs. It is clear, I believe, that this case has not been made in the Report. Many comments in the Report itself support this conclusion. And as it says (on page 22):

[I]nformation gaps and uncertainties suggest the need for a cautious approach to reform in this area.

The recommended reforms are not cautious. They run the full gamut of risks / costs discussed above without any satisfactory apprehension of intended benefits. They bypass consideration of alternative policy instruments. And, if implemented, they will be costly to reverse, should that need arise. I submit that the cautious course of action is clearly to maintain the status quo – at least until the case to change it has been satisfactorily made.

- Nam Le