



## RESTRICTIONS ON THE PARALLEL IMPORTATION OF BOOKS

### PRODUCTIVITY COMMISSION DISCUSSION DRAFT

#### MURDOCH BOOKS' RESPONSE

##### Introduction

Murdoch Books is strongly opposed to the Productivity Commission's discussion draft, in terms of both its content and its recommendations and remains strongly committed to the position that territorial copyright, as it is embodied in the 30 day rule, is the only way in which this industry can continue to flourish and benefit all stake holders, including the consumer.

Incorrect key assumptions, a lack of factual evidence and a lack of understanding of the key drivers of the industry have all contributed to the deeply flawed and damaging recommendations that have been made.

##### **KEY ERRONEOUS ASSUMPTIONS**

- 1. That books only sell in the first 12 months of their life and that backlist is therefore largely irrelevant. *"Titles in print that have typically been on the market for 12 months or more and which are now generally sold in low volumes."***

**The linked assumption that the discount department stores do not support backlist.**

The assumption that backlist delivers low volume sales appears to be the primary driver of the recommendation to remove PIRs after 12 months, yet there is absolutely no evidence anywhere in the report that supports this claim and the reality of the market is actually very different.

##### The Facts for Murdoch Books

- 25-30% of our sales in Australia are generated from the backlist
- 60-70% of our sales to the USA are generated from the backlist
- YTD (1 July to 31 March), 22% of sales into the discount department stores were from backlist titles.

These backlist sales are an extremely important part of the mix of business, for both us as publisher and the booksellers, because they have a reliable ongoing sales pattern, low returns and they contribute significantly to the range offer in store for the consumer. If these sales were to diminish, as they inevitably would under the draft proposal, the balance of risk within our business would change significantly, which would have to flow into the level of risk being taken in new investments, especially new untested authors.



**2. That lifting PIRs on backlist titles will lead to lower prices because of increased competition.**

Once again, this is an unsubstantiated claim that is not supported by the current market place, where there is a wide range of pricing on the backlist.

The Facts for Murdoch Books

- 82% of MB's backlist titles on the website of a major chain are currently listed at retail prices 9%-11% above the RRP.
- Every title across a narrower range, also priced 10% above the RRP on another major chain website.
- Every backlist title for a major discount department store listed at a discounted price, the majority of which are at least 20% less than the RRP.

The only "evidence" that currently exists around the pricing of backlist is that there is competition, and that some retailers see this part of the range as a way of enhancing their margin, not of pricing books at a lower level for consumer benefit.

**3. That *"opportunities to import remainders from abroad could greatly increase price competition for parts of the trade backlist."***

Obviously, the PC sees this an advantage, solely because prices are low, even though there is an acknowledgment that *"authors receive little or no royalty from them."*

This is as damaging an assumption as the view that backlist does not sell in volume and it is vitally important that the PC understand that remaindering is not something to be applauded as a competitive force in price. Nor is it restricted to the last few copies of books that are at the end of their life, or failed titles that have no life left in them, as the Coalition for Cheaper Books would have us believe.

Books are remaindered for a number of reasons, including over- printing, making way for a new format at a new price that might appeal better to the intended market and higher than anticipated returns. Publishing is a risk business and it is very, very difficult to accurately print the right number of books for the market in every instance. Publishers exercise a good deal of caution in their remaindering decisions, in terms of price, timing and outlets, in order to protect the author's future work and mitigate the loss for everyone involved.

Overseas dumping of remainders is uncontrollable and potentially hugely damaging and this market is very appealing for USA and UK sellers, as it is a long way from their home market.

Scenario, based on an actual costs and historical sales information

***New Title publishing in October 2008 at a AUD RRP of \$80.00.***

***WIP cost of \$135,000 (ie all costs pre printing, including photography, styling, editing, design, proofing, colour separations, indexing)***



***Advance to the author \$50,000***

***COGS cost of \$10 per unit.***

***Print run of 15K Australia and 20K USA, publishing simultaneously with Australia.***

***Marketing \$100K***

***Total investment for publisher: \$635,000***

***First print run margin of well under 20%, before distribution, or any other overhead allocation.***

***Australia sells 15K units in the Christmas period and reprints another 5K for delivery in February 09. Ongoing sales pattern settles in at around 500-800 units per month in line with the author's previous title, which has been selling 3K-5K units per year for 4 years.***

***October 2009, Australia loses territorial rights for this new title.***

***The USA has been over ambitious in their printing and decides to quit their remaining 7,500 units at \$4.00 USD per unit. Wholesaler sells to an Australian retailer at \$10 Aus. Australian retailer retails 7,500 units at \$24.95 for the first month and then drops the balance of the stock to \$19.95 to quit the final units.***

***Ongoing sale of the Australian title stops. Australian publisher has to remainder the final 3k units in stock at \$10 and the title goes out of print.***

***4-5 years lost sales, totalling between 24,000 and 38,000 units depending on rate of sale.***

- ***Author loss of income between \$160,000 and \$250,000***
- ***Publisher loss of return on investment of at least \$500,000***
- ***Bookseller lost sales of \$1.9 to \$3 million***

***Replaced by 5,500 units sold at \$24.95 and 2,000 units sold at \$19.95***

- ***Author earnings \$7,500 at best***
- ***Publisher no further return on investment***
- ***Bookseller sales of \$177,000***

***This example clearly demonstrates that remainder dumping into Australia benefits no one:***

- ***The author loses substantial royalties***
- ***the bookseller and publisher lose significant sales and margin***
- ***the consumer loses in terms of range and opportunity to purchase***



**4. That losing territorial rights on backlist titles has no impact on ROI.**

***“...limiting the period of PIR protection to one year would continue to provide local publishers with the certainty to invest in the development of new manuscripts knowing that this investment, and that entailed in marketing and promotion, would not be undermined by parallel imports during what is generally the peak sales period. In so doing, it would preserve incentives for the generation of culturally valuable local works.”***

This argument and conclusion are simply wrong and as damaging as saying to Apple that they can have exclusivity of the IPOD for a period of 12 months, when the sales are at their highest, but that after that first year anyone in the world is free to make and sell that product.

This line of reasoning:

- underestimates the level of investment that publishers are making
- underestimates the time it can take to get any return on that investment
- underestimates the length of time over which a book can sell steadily and profitably
- ignores the cash flow and profit impact of such a curtailing of rights

While it does depend on the category of book and the profile of the author, earning back investment for a publisher, is almost always a drawn out affair.

- Books by first time authors more often than not, do not earn out the investment made in them. It can take two, three, four or more books to firmly establish a new writer, at which stage the earlier works get a fresh lease of life and start to sell in a way that they had not at the time of release.  
*Loss of territorial rights after 12 months would lead to those earlier titles going out of print and remaining out of print. A loss for the publisher, the author, the bookseller and the consumer.*

- In series publishing it is a well recognised precedent that the sales of Book 1 are the strongest and that those sales pick up each time a new title in the series is published.  
*Loss of territorial rights after 12 months would mean that the publisher was unable to recoup the considerable amount of money involved in launching a new series, as they would no longer be able to predict the demand for the previous books, as the series gathered momentum.*

Example, The Millenium Series, by Stieg Larsson.

This is a 3 crime novel series by a Swedish writer, which has taken Europe by storm and is now starting to do the same in English translation.



Murdoch Books sells and markets these titles as part of their agency agreement with a UK publisher, Quercus, who are the originating publisher of the English language edition.

Book 1 was published in TPB in February 2008 in Australia, simultaneously with the UK HB. MB spent a considerable amount of time and money establishing Book 1 in the market place and although the sales were strong as a result (35,000 units in TPB), the margin after COGS and marketing expenditure, but before any overhead allocations or distribution costs, was only 17%. This was because we saw the investment in this title as critical to the ongoing success and profile of the total series.

Book 1 was published in B format PB in January 2009, with an on-sale date a week prior to Christmas, along with the TPB of Book 2. 51,075 units of Book 1 have been sold in this format to date, 30,000 of which have sold since 1 February 2009.

*Under the PC's 12 month recommendation, this title would have been open market from 1 February 2009, with the resulting lack of guarantee that the money spent on the first edition could be recouped in the second. Under that scenario, MB could not have justified the level of bookseller and marketing support that was given to Book 1, without the certainty that over the life of this series, such investment could be justified.*

- Another speciality area of MB is Food publishing. A new food series is a very major investment, with WIP costs (as explained above) between \$750,000 and \$1,000,000, depending on the number of titles in the series. These type of heavily illustrated, highly designed publishing is designed to earn back the investment over a 3-4 year period, as the first 12 months of any major series, sells at a loss. Overseas sales are also a critical part of this investment.

*Under the PC's recommendations, the scenario as outlined in point 4, under remainders, could happen very easily and would make it impossible to create these books in this way, in the future.*

**5. That publishers could extend their 12 month territorial rights period by “holding back release in foreign markets.”**

It is difficult to believe that this could be a serious recommendation.

The book industry is currently robust and successful. Part of this success is a result of the effort that publishers have put into export sales, sales which benefit the author, help the publisher get return on their investment, and provide additional promotional back up for the local bookseller and therefore the consumer.

To suggest that this success should now be curtailed in order to make an erroneous and damaging curtailing of territorial rights work better, is quite simply a nonsense.



6. **That such a significant and far reaching change to the current copyright, would have no real effect on the stakeholders in the industry.**

The draft report shows scant regard for any of the players in this industry. Authors, printers, publishers and booksellers, are all fairly substantially disregarded in favour of the consumer. Despite their own acknowledgement that the removal of PIRs could lead to a reduction in the range of Australian authored books to the disadvantage of some consumers, a reduction in the range of booksellers, especially independents and a reduction in the size of the printing industry, the PC still manages to arrive at the staggering conclusion that although consumers in the book world could well be worse off, ***“consumers as a whole would be better off.”***

This is unsubstantiated economic rationalism, showing that once again, the PC have an ideological stance that they refuse to abandon. Without any evidence, or clarification of the way in which these wider consumers will benefit, they are prepared to risk the viability of a successful industry, including a significant loss of jobs, for an undefined benefit to an unquantified market.

How can the viability of a strong and vital industry be placed under threat for that?

### **LACK OF EVIDENCE**

It is clear in the draft report that the philosophical view that underpins the recommendations, is that PIRs are a form of protection, and that this therefore means that prices are artificially high because of the lack of competition, and that availability and supply chain efficiency are compromised.

1. As the overwhelming majority of the 272 original submissions to the PC point out, territorial copyright is not a protection or a “disguised subsidy”. It is one of the basic tenets upon which the principle of copyright is built throughout the world. The 30 day rule prevents the publisher from abusing this right.
2. Despite their predilection to do so, the PC has been unable to provide evidence that supports their belief that PIRs lead to availability problems or supply chain issues. On their own acknowledgement they found that ***“most books are published in a timely manner”*** and that there appears to be ***“no general problem with the quality of service”***, yet the suspicion that this cannot be the case continues to pervade the tone of the report.
3. Then to the fraught issue of price. Despite a considerable amount of comparative analysis undertaken in many of the submissions and by the PC themselves, there is no conclusive evidence that supports the view that PIRs lead to higher prices through non-competition. The complexities of fair pricing comparisons are considerable as they include:

- Exchange rate fluctuations
- Format differences which lead to different cost bases (eg the USA trade paperback is a completely different size to the Australian TPB and does not form a direct comparison at all)
- Economies of scale which also lead to a very different cost base
- Market differences in standards of production and design
- Freight costs which are exacerbated by Australia's distance from the source of supply

After all the work that has been undertaken on this topic, the only conclusion that can fairly be drawn is that the exchange rate has the greatest influence on price comparison and that when the USA and Australian relativities are scrutinised in light of the 10 year average exchange rate of 69 cents, the price differences vary little from a standardised margin for error.

### **LACK OF UNDERSTANDING OF THE KEY DRIVERS OF THE INDUSTRY**

The draft report reveals a lack of understanding of the fundamentals of this industry that has led the PC to make a recommendation for change that no one proposed and no one will endorse.

#### **Key Drivers**

- Backlist sales, which provide relatively risk free, core turnover to booksellers and publishers, income for authors, breadth of range to consumers and a steady base of work for local printers. It is backlist sales that contribute most strongly to the culture by creating the range and diversity of offer to the consumer.
- Local printing, which is the only way in which any player can provide simultaneous publication of titles with overseas markets, in any volume.
- Economies of scale. The printing industry works solely on the basis of economies of scale. They need a balance of high volume work and the steady repeat business provided by backlist reprints, in order to provide print prices that support current market pricing. If the economies of scale go, print prices rise and RRP's inevitably follow.
- Export sales are a significant contributor to the viability of publishing.
- Publishing is a high risk industry, and to be successful, a publisher needs to balance that risk across the different components of the business. High volume new title sales are the riskiest sales, and without the solid underpinning of regular sales from backlist titles, publishers would simply have to review their commitment to new books and new authors, in order to try and recalibrate that risk profile.

### **SUMMARY**

The draft report by the PC leaves the reader in no doubt that the Commission believes PIRs should be removed and the market opened for books. Their ideology pervades the report, despite their inability to provide any evidence for their position.

The weight of the 272 submissions countering that view, however, combined with tough economic times has led the PC to make a recommendation for change that reveals just how little they understand the book industry. Contrary to the PC's view, the facts are that:



- Backlist sales account for 20% to 30% of sales and are an essential component of the product mix for all parts of the industry, including authors, publishers, booksellers, printers and the thousands of people employed by each of those stake holders.
- There is no evidence that PIRs lead to increased pricing across the board.
- There is no evidence that removing PIRs would result in reduced pricing, although there is evidence that shows that booksellers are seeking additional margin, not reduced prices.
- Under the current rules, a bookseller can order any copy of any book from anywhere in the world, completely legally, in response to a customer order.
- Under the current rules, a bookseller can order any title that has not been published within 30 days of first publication in the world, and numerous submissions point to many high profile examples of such books.
- This industry contributes significantly to the cultural landscape of this country, not only by bringing to life the values and ideals of this nation, but also the wider world. Books bring ideas to the forefront, and any diminishment in not only the range, but also in the riskiness of the subject matter, will lead to a diminishment of this country's culture.

**This is an industry that is not broken. Rather, it is an industry that:**

- Out performs all the other creative arts
- Is a vital contributor to the cultural landscape of this country and the range and diversity of the backlist is a key component of this cultural contribution
- Employs thousands of staff
- Provides opportunity for thousands of authors and
- Stands on its own two feet as a vibrant and profitable industry.

**In this draft report there is simply no evidence that justifies change, nor is there any evidence that proves that there would be any positive results from it. It is simply beyond comprehension that a successful industry could be placed at risk, based solely on baseless economic ideology. The current territorial copyright embodied in the 30 day rule, ensures that publishers are responsive to the requirements for efficient and timely delivery of well priced books, while allowing them to still compete on a level playing field with other large English language markets, the vast majority of whom have territorial rights enshrined.**

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