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Post-Draft Submission to the Productivity Commission Inquiry into Copyright

Restrictions on the Parallel Importation of Books

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Dear Commissioners,

1. The Productivity Commission proposes that territorial copyright, under the terms of the 30-day rule, be abolished 12 months after a book is published in Australia. Instead of the current ‘use it or lose it’ rule, we would have a ‘use it and lose it’ rule. If the intention of the Productivity Commission is somehow to preserve the benefits of territorial copyright while also removing them, this contradictory strategy has failed. The proposal, if adopted, means the effective abolition of the 30-day rule, because the 30-day rule guarantees Australian writers territorial copyright if they publish in their own country first. The proposal is counter-productive, destructive and confusing, and should be abandoned.

The proposal is likely to put upward pressure on prices. It will force publishers to assume they must recoup costs over a twelve-month period, which can be a very short time in the life of a book. Publishers are likely to price on the assumption that the market for their local editions will shrink after twelve months. The proposal is also likely to cause production costs to increase as printers seek to recover revenue lost to

the parallel importation of foreign editions. The upward pressure on printing costs will be more pronounced if one of the two major printers were to fail as a consequence of the proposal being adopted. The potential damage will not be significantly lessened if the period before territorial copyright is erased is lengthened to 24 months or any other term. Any erasure of territorial copyright will permit market-distorting dumping and free-riding to occur at any moment when a book is successful, whether that is a year, or two years or five years or even longer after publication.

2. The Productivity Commission cannot put a time limit on territorial copyright and expect the publishing industry to grow or writers to flourish. The Commission finds that in the absence of territorial copyright the industry will contract. It will contract to the extent that unqualified parallel importation takes place or has the potential to take place, both of which will cause an attendant loss of confidence. Jobs will be lost and all aspects of book publishing activity will shrink, in line with the predictions in the draft report.

3. Writers, without whom there would be no publishing industry, will be very hard hit. The draft report is clear about this. It predicts: ‘a reduction in publishing activity’; ‘authors would generally face reductions in their income’; ‘lower royalty payments’; ‘would likely result in some authors exiting the market, and might discourage some others from entering it’; ‘new or undiscovered authors would find it more difficult to gain attention in an open market’; ‘the difficulty for all new authors in obtaining local publication’. The removal of territorial copyright will damage our writers, our writing culture, and therefore our culture generally. Perhaps this is the most astonishing and

scandalous thing about this report: the fact that writers, the keepers of our stories, can be treated with such scant respect. Replace the word ‘authors’ in the phrase ‘authors would generally face reductions in their income’ with ‘doctors’ or ‘teachers’ or ‘public servants’ or ‘politicians’ and imagine the very idea that we would propose to *reduce* the incomes of these professionals or their ability to pursue a career. How could the work a writer does be so devalued that an influential shaper of policy such as the Productivity Commission could craft these sentences?

4. The Productivity Commission cannot quantify the effect of territorial copyright on the price of books. The corollary of this is that it cannot quantify the absence of territorial copyright on price. The Productivity Commission is therefore proposing to trade a known benefit which is central to industry success (territorial copyright) and on its own evidence a price-efficient market (see point 5) for an uncertain pricing outcome and certain harm to our culture. Who could call this good industry policy?

5. The Commission finds that at an exchange rate of 0.69 cents to the US dollar there is currently no price differential between Australia and the US. The average exchange rate for the last ten years is in fact 0.69 cents. We may therefore conclude that over the past decade book prices in Australia have on average been competitive with prices in the US, the largest English-language market in the world. We are also entitled to conclude that, since this happened under the auspices of the 30-day rule, the rule itself has played a key role in creating market efficiencies which have put downward pressure on prices.

6. The Productivity Commission has come up with misleading definitions of both

front list ('Titles with relatively strong sales, which have usually been on the market for less than 12 months') and back list ('Titles in print that have typically been on the market for 12 months or more and which are now generally sold in low volumes.')

It is in the dreams of authors, publishers and booksellers that front list invariably means 'relatively strong sales'. In fact front list is where all the risk is concentrated, and where most titles fail. The Commission seems to have a top of the pops view of books—they all sell quickly when they are published and then they vanish to be replaced by new books which sell quickly etc. This is true of certain bestselling books (celebrity autobiography, for example) which are highly visible, but it is untrue, however, of many other bestselling books and many important books that sell well but never make any bestseller list or continue to sell well after falling off a bestseller list. Bestseller lists measure speed of sale only, not extent, and some bestselling books are outsold over time by books that never make the lists.

The Productivity Commission definition of back list is not helpful at all. For many retailers back list is as much as 40 per cent of all sales. At Text over the last two years back list has hovered between 40 and 50 per cent of all sales. Low volumes?

Back list is the measure of writing and publishing success. It is the key to profitability for publishers and provides income certainty for authors. Back list is the part of our business which is the most predictable. The strongest back list sales are concentrated in a small number of titles, and these are precisely the titles which allow publishers to continue to take risks on the front list and which provide royalty income to sustain writers while they produce new books. These are the books we all want to write or publish or read. This understanding is absent from the draft report.

Over the last two years at Text between 70 and 80 per cent of our trade income (excluding export revenue) each year has come from our top 20 titles. Of those top 20 titles between 40 and 45 percent are back list, ie, around 8 or 9 titles in the top 20 per year. The five titles in the table below are key titles from that top 20, all by Australian writers with the exception of *Mister Pip* whose author is a New Zealander. These are among our most influential, internationally celebrated and productive titles. All of them were sold into many territories around the world. In all cases the editorial, design, marketing and promotional work for these titles was done in Melbourne. The investment to publish these books created jobs. These books were printed in Adelaide. The investment to print and reprint them in Australia created jobs.

This is a very small sample but the table shows why back list is so important. It describes the percentage of sales by volume made in each calendar year in all editions from the date of publication to the end of 2008. The data needs to be treated with some caution: it has not been sorted to define sales 12 months and 1 day after the publication of each but is organised by calendar year. In all cases this will have diminished the percentage recorded for the first year of sale. Nonetheless it serves to illustrate how back list sales of strong titles typically spread over a long period of time and can spike some years after publication. All of these books have sold more copies in the years subsequent to their first year of sale than they did in that first year. Furthermore, the percentage of sales achieved in the first year will continue to fall over time, especially when the authors write new books which enhance the sales of these earlier books, or if film projects currently underway for a number of these titles are successfully brought to market, or as course adoptions take effect.

	2005	2006	2007	2008	Percentage sold after year one	Percentage sold after year two
<i>The Secret River</i> by Kate Grenville (published July 05)	14%	44%	29%	13%	86%	42%
<i>In My Skin</i> by Kate Holden (published August 05)	46%	17%	21%	16%	54%	37%
<i>The Broken Shore</i> by Peter Temple (published August 05)	9%	15%	64%	12%	91%	78%
<i>The Weather Makers</i> by Tim Flannery (published Sept 05)	34%	32%	27%	7%	66%	34%
<i>Mister Pip</i> by Lloyd Jones (published September 06)		25%	43%	32%	75%	32%
Average percentage sale of all titles					74%	45%

We should not be surprised by these results. Back list is by definition the best books, the books that people want to go on reading, that articulate most profoundly our

stories, who we are and what we do and how we talk to each other. Key back list describes those books which continue to be discovered by readers. These books belong to our living cultural heritage. As do *Cloudstreet*, *The Book Thief* and *Eucalyptus*, and so many other much loved internationally successful Australian books.

The spike in sales for *The Secret River* in its second year of publication reflects its shortlisting for the highly prestigious Man Booker Prize which happened in September 2006, more than twelve months after it was published. The same is true of *Mister Pip* which was shortlisted for the same prize in 2007, twelve months after it was published. *The Broken Shore* won the Gold Dagger in London in its third year of publication and in its fourth year sold more copies than it had in its first. All of these books were bestsellers in the UK with the exception of *The Weather Makers* but it went to number 1 in Canada.

This is why the Productivity Commission proposal to destroy territorial copyright after 12 months is designed to punish our best writers most severely, and diminish their incomes and the incomes of the publishers who assumed the full costs of bringing these books to market. It will disproportionately punish those writers whose books continue to find readers. It will unfairly punish those writers whose books win big international prizes and are made into films. But it will hurt every writer whose career has flourished internationally under the 30-day rule, and hurting those writers will hurt all writers because all writers benefit from our industry's international success. The proposal is precisely tailored to punish publishers who take risks on authors and books that may take years to bear fruit. All publishers take such risks but

under the Productivity Commission proposal only publishers in Canada, the US and the UK will be able to reap their long-term reward.

I do not believe that the Productivity Commission understands the implications of its own proposed reform. This is not about creating downward pressure on price. It is about making it legal to distort the market, making it legal for successful titles to be picked off by low royalty imports and dumped remainders. This is exactly what the 30 day rule is designed to prevent, and moreover has prevented. The 30 day rule has in many respects created a porous market, because it offers so many legal opportunities for parallel importation, but it has also created a market for Australian writers which is above all *fair*.

What have our writers done to be stripped of rights that every writer in the US, the UK and Canada has? Would we weaken the market power of athletes, actors or artists precisely because they were successful at home and abroad? The Productivity Commission is proposing what amounts to a specific, implicit tax on writers and publishers to be incurred when they trade internationally. This proposal is regressive in every sense.

7. The Productivity Commission's proposals will harm our export culture because the most successful exporters will be punished for their entrepreneurship precisely to the degree that they are successful. The Commission knows that our export culture will be damaged and has some free advice to the industry on how to get around the rules it wants to introduce, a rather odd and wishful tactic in itself. It suggests that we delay selling international rights for as long as possible in order to shield ourselves from



competing foreign editions. This is like telling lemmings to walk slowly. The Commission is so enamoured of this timid anti-export tactic that it mentions it three times in the draft report. It's a terrible idea, and not worthy of the Productivity Commission. Since when has the PC been in the business of telling industry to be defensive about export?

Twelve months after we publish we would have no Australian copyright. Our competitors in London and New York will understand this and insist on buying non-exclusive Australian rights. Our bargaining power based on Australian law will have evaporated. British publishers in particular, who still run their business on the neo-colonial notion that Australia is an inherent part of the suite of territories to be acquired for a typical title, will be drooling at the prospect. And us? We'll be damned if we do and damned if we don't. Our internationally competitive days will be over.

8. The Productivity Commission is also occupied by what it calls the 'leakage' theory and devotes considerable attention to it. The idea is that, since books *must* be more expensive in this country because we have territorial copyright, the Australian consumer is condemned to subsidise foreign authors and publishers by paying too much for their books. There are several problems with this theory. Firstly, according to the ten-year average exchange rates, books have been competitively priced here, even though we have (qualified) territorial copyright. Secondly, most foreign authors whose books are sold in this country earn very small export royalties, so they aren't getting subsidised. With or without territorial copyright the majority of foreign writers will be paid an export royalty. The publishers who import those books have to pay freight costs unless they import-replace by printing locally, in which case there are

economic benefits through local job creation in the printing industry. Finally, those foreign authors who exercise their territorial copyright and allow their books to be published here, and who also earn domestic royalties, create jobs for the Australians who do the creative editorial, design and production work to bring those books to market.

According to its own logic, the Commission should be on the record that, while it is in favour of the abolition of territorial copyright for Australian authors 12 months after their books are published, it supports the unqualified retention of territorial copyright in the US, UK and Canada, because consumers in those countries are therefore subsidising foreign authors who are published locally and are paid domestic royalties. Some of those foreign authors earning export dollars are Australian. Is it not in our national interest for those writers to maximise their foreign income? If this seems like an Alice-in-Wonderland logic it's because the Productivity Commission's reasoning on this matter is itself fanciful, absolutist and worthy of the Queen of Hearts herself.

9. The draft report is a lost opportunity. The Commission finds that the book industry is 'flourishing' but somewhat incredibly it does not elaborate on this finding: nowhere does it articulate a vision for the industry or a set of goals for it to achieve. Nowhere does it attempt to forecast how the industry will continue to develop and evolve if the current arrangements (the arrangements which have allowed it to 'flourish') stay in place. Nonetheless, in the evidence submitted to the inquiry by more than 300 parties, we have an unprecedented multidimensional portrait of our industry. This evidence is an extraordinarily valuable resource and should not be allowed to go to waste.

10. We welcome the Productivity Commission's proposal that the ABS should resume measuring the industry. The industry has not been measured since 2003/04 and we do not have a full suite of data about publishing in Australia. The truth is that this inquiry has got things the wrong way around. We need to measure the industry properly before any recommendations for change can be meaningful or informed. We need to find out where the true efficiencies and any inefficiencies are to be found by understanding and addressing the evidence on its own terms. (For instance, the loophole which allows the consumer who is parallel importing for own use to evade the GST, while the bookseller who is parallel importing on customer request must apply the GST. The PC took evidence on this issue but refused to consider it, even though it directs revenue to Amazon and other online booksellers and hurts our booksellers every day.) The goal of measuring the industry should be to formulate a national publishing industry plan to build on our success to date, and especially to enhance our capacity to export our culture through books. This plan should draw on the substantial body of evidence submitted to the Productivity Commission.

11. The national plan should include these goals: ensuring territorial copyright for all Australian writers, ie, the rights of Australian writers to compete on a level playing field and to be paid domestic royalties in their own country; ensuring that independent publishers can continue to compete with multinational publishers here and abroad; maintaining a competitive printing industry which will in turn exert downward pressure on print prices; preserving the market power and share of independent booksellers who play an extraordinary role in the promotion of Australian writers and of books in general; and helping all booksellers compete with foreign online booksellers. These goals are the best way to protect the national interest: to maintain a

competitive retail environment while safeguarding the industry's cultural values and aspirations to take our books to the world.

12. I am proposing the Productivity Commission revise its draft recommendations accordingly:

a. That the 30-day rule should be retained without qualification. This will guarantee territorial copyright for all Australian authors who choose to have their books published here first, and guarantee the specific and market-tested opportunities our booksellers have to parallel import books while enjoying the umbrella benefits of territorial copyright.

b. That the ABS should measure the book industry on a regular basis.

c. That pursuant on (a) the evidence presented to the Productivity Commission together with the data gathered by the ABS should be used to formulate a national industry plan, shaped by representatives from all parts of the industry in consultation with state and federal government, and to be revised on a regular basis.

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