



Supplementary Submission

Copyright Restrictions on the Parallel
Importation of Books

April 2009

On behalf of HarperCollins Publishers Australia I am providing a supplementary submission following the draft report into copyright restrictions on parallel importation of books.

Our position, however, remains that of our first submission, as we support the 30 day rule as it is currently set out. The proposal to provide copyright for one year does not, we believe, offer an appropriate level of (unsubstantiated) outcome to offset the (definite) risks attached.

Beyond anything else there is no other significant English speaking market where this kind of copyright experiment has been made. All other markets (UK, US, SA, Canada) remain fiercely protective of their territorial rights in order to provide certainty for their writers and focus for the industry and certainly would not alter their position in the pursuit of a cheaper option for the consumer. Even in New Zealand where the market has been opened there is no evidence that prices for consumers have improved and absolute proof that the market has been shrinking. A change as suggested will at best be a risky experiment with uncertain outcomes and at worst completely undermine an industry which contributes at many levels of Australian society. If this recommendation were to become law it would make Australia a “cowboy” state in the international copyright arena and undermine its international commitments.

The Commission will be well aware of the arguments around balance in the industry. These have, I am sure, been canvassed widely but at the risk of overstating them I wish to recap, as ignoring these issues is where the Commission faces its greatest possible risk. The possibility of undermining the balance by reducing the capacity of multinational companies to invest and resource the market will without doubt deliver the greatest blow to what is a thriving industry without I believe delivering the cheaper books.

Balance

- Multinationals employ the largest number of people in all areas of business.
- These businesses provide infrastructure and training for other Australian based publishers.
- They also provide the considerable bulk of onshore printing.
- They publish significant numbers of Australian books.
- The marketing spend they have provides a base level of promotional activity within the industry as a whole.
- They fund industry wide initiatives and export activity.

- They fund longer term projects.

They do so on the basis that they will receive a return on their investment across the portfolio of their activities. The economic equation is simple - if the investment cannot be supported resourcing will reduce. There is nothing surer than that Harper Collins internationally will review its investments in Australia if it cannot guarantee copyright past one year. We will scale back our operation, publish less books, raise our prices, reduce our marketing spend, print less in Australia, employ less people and provide a reduced level of service to our customers and range of books for the public.

Book Pricing

Let's turn to this quickly. The reduction in the price of books to consumers is the primary concern here. I emphasise the price to consumers as this is the outcome I feel least likely to occur.

HarperCollins does not substantially cross subsidise between imported and local books. Our local Australian Publishing division is significant and profitable. We do, however, manage our margin across the portfolio of our business with the aim of keeping the price of all our books to the consumer as competitive as possible.

To that end the profit we make in our distribution centre ensures our overall profitability and allows us to reduce our target margins expectation on imported books, for example maintaining constant prices when the currency fluctuates wildly. The capacity to manage income from our total business allows a great deal of flexibility. Without the investment in infrastructure we would not be able to do that.

We certainly cross subsidise across types of books in order to keep retail prices within reach. This means that the price of a book we are bringing in by air or by sea (or printing locally) does not fluctuate

wildly therefore not penalising the consumer if they don't want the book that is in the DDS at the time.

The current system requires us to manage the profitable and the not profitable books. Demand for the unprofitable ones will not reduce as they make up the vast majority of international and domestic output and Australian consumers are savvy to international reviews and bestseller lists. By taking away the incentive to have to do this, HarperCollins would choose only to deal with the profitable ones leaving the rest to be managed by:

- 1) The consumer themselves - through international web sites, therefore reducing spend onshore (with its associated loss of jobs etc), without any possibility of local investment not to mention the inefficiency and carbon footprint of importing books one at a time.
- 2) Booksellers – who will make no more money than publishers would and will therefore have to manage their margin across their own business requiring them to cross subsidise.

In order to reduce prices someone has to give up their margin. Margin cannot magically appear. The international publishers are not likely to make more margin available as this proposal would see them reducing resources and managing their investment. If this is between publishers/importers and booksellers there is little evidence that retailers are inclined to pass margin on to consumers. In fact at the moment evidence is that where possible, some will increase prices. This is not because they are trying to sell fewer books but rather they are trying to manage the conflict around delivering to the consumer what they want in way of range etc and still make money. **This is not a high margin business.** With publishers reducing resources the requirements on booksellers to pick up the infrastructure gaps, take stock and exchange risks, promote and market will increase. This will have to be paid for somewhere in the supply chain. Multinational companies are unlikely to open accounts with Australian retailers if they have local subsidiaries. If they were to do so they would most likely offer regular retailer discounts. This means the Australian retailer will be responsible for exchange and stock risk as well as freight. This will not allow them a margin that will see books decrease in price (quite the opposite). The same can be said if they purchase from international wholesalers. If a publisher is no longer required to represent less profitable books then booksellers will have to access them one way or another to meet consumer demand. None of this is going to see the price of books reducing. The way retail prices are managed now is through

balance and risk being taken by publishers on the basis of a long term commitment as a result of the copyright guarantees.

The commission seems satisfied that competition exists within the first year in the life of a book which manages price and provides an income that will allow a return on investment to be regained in that period. This is patently untrue for Australian books where we would recover no more than 20% of our advance investment (for example) in the first year, on average we recover 60% of the investment within three years (bearing in mind that the investment is normally not fully recovered until the second edition is published) and 20% which is written off altogether. That is not to mention investment in design and printing etc. If as a dictionary/atlas publisher I needed to make the decision to invest a great deal of money to be recovered over ten years or so I would, under this proposal, simply not be able to justify it. Having one year to recover investment will narrow significantly our publishing options.

As far as imported books are concerned our investment varies but we would not be able to invest in building and supporting an author over a number of years or provide author tours or even market in any significant way as the investment would not return in the first year.

What this proposal will support is a one size fits all approach for the Australian consumer:

- Price will be driven by competition.
- Competition will be driven by the DDS model of bookselling.

If you want a book that is not available in this channel (and this will be the vast majority of what is being published globally) you need to import it yourself or pay a lot of money to a retailer to do so for you.

This of course excludes a great number of consumers in Australia who don't have access to the DDS model and who, without publishers cross subsidizing books, will be forced to pay higher prices. Nor does it account for the fact that if the DDS model chose to no longer sell books (as it is not core business) any competition would disappear anyway.

This proposal attempts to:

Provide the consumer with the possibility of cheaper priced books. The proposal itself offers no evidence that this would be the outcome.

However the proposal will:

- **Reduce onshore printing resulting in job losses for the printing industry.**
- **Reduce the investment in multinational infrastructure resulting in job losses.**
- **Reduce export initiatives for Australian publishers resulting in income loss for Australian authors.**
- **Reduce the number of books published in Australia with resulting cultural and economic outcomes.**
- **Reduce the range of books made available by multinational publishers in this market resulting in price increases.**
- **Reduce the range of bookselling channels (Independents) therefore reducing options for anyone other than urban Australians creating inequalities.**

HarperCollins fails to see how this proposal meets even the basic criterion set out. The risks involved are significant and the chance of getting it wrong and being unable to re-establish an infrastructure far outweighs any possibility gained. We strongly argue that the current 30 day rule provides balance and has over its life served the book buying public well and that they will be best served by its maintenance.

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