

## **Copyright Restrictions on the Parallel Importation of Books**

### **Jaclyn Moriarty**

I am a writer of books for young adults. My books are sold in Australia, the US, the UK, and several other territories. Prior to becoming a full-time writer, I completed a PhD at Cambridge University on the law relating to the media and young people, and practised as a media and copyright lawyer.

The discussion draft recommends that parallel importation of books be permitted twelve months after publication. I strongly object to this recommendation.

For the reasons set out in numerous other submissions, I am opposed to any relaxation of the restrictions on parallel importation of books. In this submission, however, I will respond to some of the issues raised by the discussion draft that particularly troubled me.

1. The discussion draft is sceptical of the publishing industry's concerns about the potential impact of the proposal. The draft points out that similar concerns were expressed when the '30/90 rule' was first introduced and yet the industry survived.

Just because you chip away at something once, and find that it is still standing, does not mean you should feel free to chip away at it again. It may not be able to withstand further attacks.

More to the point, the proposed changes are different in kind to the '30/90 day' rule. If that rule 'chipped away' at the industry, this would be more like a hammer blow. The industry was able to adjust to the 30/90 day rule by taking action—ensuring that it worked fast to get books out to the Australian public. It would be powerless in the face of these proposed changes. There is nothing anyone can do to ensure that a book makes its best sales within the first twelve months after publication. A prize, a movie deal, or simply a shift in mood can make the public responsive to a book years after publication. Why should the publisher who first invested in the book—discovered it, nurtured it, and took a chance on it—not reap the benefits of those later years of success? Why should publishers not be able to rely on income from a backlist, enabling them to take risks on new authors and new books?

2. The discussion draft states that, as most Australian writers are not published overseas, most do not benefit from the restrictions on parallel importation.

Even if an Australian writer is only published in Australia today, there is always the chance of foreign publication tomorrow. At that point, the restrictions will become directly relevant.

But the restrictions already *are* relevant: writers who are only published in Australia *do* benefit. Their publishers can invest in them because they know that, if foreign publication does occur, their own investment will not be effectively undermined.

The discussion draft points to a survey that suggests many publishers will still publish Australian writers, even if parallel importation restrictions are changed. However, those publishers will pay substantially less for Australian rights—or they will insist on international rights—or they will cease to exist because the proposed change has undermined their viability.

3. The discussion draft suggests that changes to the parallel importation restrictions could stimulate the publishing industry—that is, by burdening something with a new problem, you encourage it to find innovative ways to solve the problem.

It seems to me that retailers like K-mart and Dymocks that are pressing for these changes are the ones that should be encouraged to find innovative solutions to the problem of their reduced profit margins—solutions that do not trample on the profit margins of publishers and writers.

4. The draft discussion accepts that there are cultural benefits to be gained from books that represent Australian culture, but goes on to reason that there are also cultural benefits to be gained from books from all over the world.

This approach troubles me for two reasons.

First, it seems to imply that a choice needs to be made between Australian books and international books; or that valuing Australian books means we cannot value international books. This is not so. Currently, with the restrictions on parallel importation in place, Australian readers have access to books from all over the world. For readers, books are almost endlessly renewable: they can be borrowed from libraries, passed around between friends, bought cheaply from second-hand bookstores. There is

even a website called [bookcrossing.com](http://bookcrossing.com) that facilitates the ‘abandonment’ of books so that other readers can pick them up and read them. (This is something that the industry already has to contend with: the fact that most people who read their books don’t actually buy them.)

Second, it suggests that most of the cultural benefits derived from Australian books are more or less available from international books anyway—so, for example, while books set in Australia might stimulate a child’s love of reading, *Harry Potter* does that even better.

There are, however, particular cultural benefits that can be derived from Australian books which are simply not available in international books—and it seems to me that the draft discussion dramatically undervalues these benefits.

Like the other writers who have provided submissions, I have had my books ‘translated’ into American and British English for those markets: cultural references, place names, slang, food, have all been changed. (An English publisher asked me to replace a bellbird reference with an English bird; an American publisher removed a reference to the Gap, a Sydney landmark, because readers might confuse it with the clothing store.)

And, like the other writers, I frequently receive letters from Australian readers who express delight in the familiarity of the Australian setting. I do not believe that this delight is just a pleasant side effect—nor even that it is worthwhile because it gives readers an ‘Australian identity’. For the following reason, I believe that the benefit of a familiar cultural landscape in a book is far more profound.

It is not uncommon to hear teenagers (and adults) say that a particular book by a particular author ‘saved me’. There are books for young people that deal with such issues as depression, suicide, self-esteem, friendship, and eating disorders. When young people recognise themselves in a book—and see their secret troubles explored, understood and resolved, it is truly a revelation for them.

I grew up reading books by English and American authors; the first time I ‘recognised myself’ in a book was when I read the Australian authors John Marsden and Libby Gleeson. It is not an exaggeration to say that books can ‘save’ young people—but a reader must identify with a character before this can happen. Australian teen readers will not identify with teen characters who go to junior high, wear sweaters, and eat candy.

5. The discussion draft appears unimpressed by the argument that the international success of Australian books has indirect economic benefits, by, for example, encouraging international readers to visit Australia. I am concerned that there may be a failure to recognise the significance, for

Australia, of international success by Australian authors. I have lived and worked as a writer in both Canada and Australia, and found the differences in the two writing communities to be extraordinary. In Canada, there was a sense of immense pride and respect for its writers—this is reflected in the esteem in which the international community holds Canada's writers. In Australia, there is a sense that the true stars are the international writers: there is a mistrust, almost, of Australian writers until they are accepted by the international community.

I do not think it is entirely a coincidence that Canada's international reputation is one of a thoughtful, intelligent, compassionate nation. Australia is viewed by the international community as a nation of sports people who are inclined, in recent years, to be racist and narrow-minded. A reputation like this has long term, far-reaching economic effects. Recently, the English media revealed to the English public that a number of Australian individuals were holding key positions in some of England's cultural institutions. England was horrified: it was taken for granted that Australians simply are not 'cultured' enough to run these institutions.

I am not suggesting that maintaining restrictions on parallel importation of books will change the way in which Australia is perceived in the international community. I have no doubt, however, that, if this proposal is implemented, it will signal to the world that Australia does not value its publishing industry or its writers—that, as a nation, it produces writers who are dispensable; writers who are worth less than the profit margins of retail chains.

Yours sincerely,  
Jaclyn Moriarty