

Productivity Commission Inquiry  
Restrictions on the Parallel Import of Books  
Supplementary Submission

**Summary**

The Australian Publishers Association is surprised and disappointed that an organisation which states that “its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community”<sup>1</sup> can bring forward the recommendations contained in the Productivity Commission’s Discussion Draft.

The recommendations would be unworkable and destructive in operation, and are not based on hard, verifiable evidence.

The Productivity Commission’s central recommendation — limiting the life of Australian territorial copyright to only 12 months — pretends to retain territorial contract while setting up conditions that would undermine and cripple it and do great harm to all involved in the Australian book industry, as well as consumers. It is – both in design, and we suspect intent – offered as the first step in an incrementalist strategy to undermine Australian book copyright.

The 1991 changes to the Copyright Act, with their world-leading ‘use it or lose it’ provisions, drove increased efficiency of local book publishers and led to significant growth in onshore printing which, in turn, dramatically improved the speed to market of the majority of books and the innovation of an immensely popular new high quality paperback format. For virtually the first time in Australian postcolonial history, the new rules encouraged local publishers to look outwards — to explore and exploit foreign rights markets and to develop exports from miniscule beginnings to around \$220 million a year now. Today, by Productivity Commission estimates, 38% of books bought in Australia is by an Australian author: a terrific vote of confidence in the commissioning and nurturing of Australian content by domestic publishers — especially when compared to the pathetic days of the cultural ‘cringe’ when our literary tastes were determined by overseas publishers; or when compared to the film industry which is about 4% Australian originated and music which is approximately 17%.

In stark contrast to these outcomes, the Productivity Commission’s 2009 recommendations would, by its own admission, diminish jobs in the domestic publishing industry, force a

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<sup>1</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, preface.

contraction in the small business end of the sector (small independent booksellers and publishers), discount and degrade the value of Australian authors and creators, and export jobs in the printing industry, while discouraging exports, distorting the market and increasing recommended retail prices for the first 12 months of a book's life.

Most ominously, the Productivity Commission's recommendations weaken the business case for publishers to invest in new and emerging Australian authors, and utterly fail to recognise the cultural and economic significance of backlist books. Territorial copyright which terminates after 12 months is highly destructive to investment security and creates massive uncertainty without benefits to anyone. As the APA said in our initial submission:

"Territorial copyright and the 30/90-day rules have underpinned 17 years of investment by publishers, printers and their suppliers in people, facilities and technology. Without that security of investment, all these industries would have to alter their business models radically. Any changes which remove the security these arrangements provide would therefore create significant risks. They are reasonably self-evident and include:

- Job losses in Australian publishers and printers and their suppliers;
- Reduced investment in these industries, limiting Australian involvement in new industries such as digital publishing, as well as innovation generally;
- Reduced income and opportunities for Australian authors, editors, designers and illustrators, both in Australian and overseas markets;
- Changes in publishers' marketing practices including reduced discounts to booksellers and potentially the end of 'sale or return';
- Concentration of market power on big supermarkets, other general retailers and big booksellers, with reduced income for and investment by small-to-medium booksellers;
- An overall reduction in choice for consumers;
- Increased carbon emissions flowing from increased book imports;
- Damage to an IP export industry (including sales of territorial rights for publication of Australian books) worth \$220 million and rising;
- Reduced availability of Australian books — especially children's books and the supplementary teaching/assessment materials produced specifically for the Australian market and currently provided free to teachers and students (impacting on the Government's national curriculum policy and on education standards generally);
- A consequent reduction in the availability of books relating to Australian history and culture. This would have a further detrimental impact on the place of Australian history and culture in Australians' lives and limit the appreciation of the importance of this history and culture to our national development; and
- Reducing the amount and proportion of uniquely Australian vocabulary, idioms and perspectives in the Australian market with imported children's books, textbooks, fiction and non-fiction books contributing to increased lingual globalisation."

A 12-month horizon on territorial copyright for Australian publishers is fundamentally unjust, especially when the territorial copyright regime applying to overseas publishers will not alter. Limiting local territorial copyright to 12 months makes it nigh on impossible for Australian publishers to make informed investment decisions. We are left with the distinct impression

that the Commission is utterly indifferent to the future of publishing in Australia, and has made little or no effort to understand the economics of the publishing firm: the fundamental driver of competition.

This is, above all, an extremely risky experiment, the design of which comes with none of the credible prospective modelling associated with Productivity Commission reviews and recommendations. No other country has terminated territorial copyright after 12 months. The fact that consumers in New Zealand's open market have received no benefits on price and have lost on diversity is a stark warning of the risks if Australia takes the path recommended by the Commission<sup>2</sup>.

The Commission's recommended review in five years, coupled with an Australian Bureau of Statistics study in the meantime, constitutes a meaningless gesture which makes no real contribution to the debate — except to underline the paucity of current evidence from which the Commission has spun its recommendations. It has all the hallmarks of last-minute work, offering an apparently plausible, but entirely superficial proposal: one which appears to be more focused on spin and saleability than on genuine economic review.

The Commission's studies show that differences between Australian and US/UK book prices are erased when the \$A is at its 10-year average against both currencies. The Commission admits that measuring the price impact of territorial copyright is 'problematic' and that territorial copyright has made possible Australia's wide and healthy range of books and booksellers. It avoids the obvious conclusion that the high Australian dollar of recent years has consistently masked the competitiveness of Australian domestic pricing. This is a basic observation, and one which could only have been wilfully ignored.

At most, the Commission judges that Australia's current territorial copyright rules "put upward pressure on prices in at least some segments of the books market"<sup>3</sup> — but it cannot quantify the impact of that pressure, if any, and cannot explain why the rules do not have a consistent, measurable impact across all segments. The Productivity Commission offers no evidence for its findings — it clearly has not found any — only vague, theoretical justifications. This kind of recursive approach to a question which has profound implications to Australia's core cultural industry is unworthy of the Productivity Commission, and we remain surprised that it was allowed to see the light of day. Every aspect of the interim report relies on a dangerous and unmodelled assumption.

We are pleased that the Commission has conceded that the current arrangements do not constitute a closed market, and that territorial copyright does not affect literacy.

All the traditional arguments against Australian Territorial Copyright have been discredited or found to be lacking. The landmark 1991 amendments to the Copyright Act by the Hawke Government created an unsung but nevertheless very real industry policy success story. So let the book industry get on with its job.

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<sup>2</sup> That market is also atypical in educational publishing through the government ownership of a publishing enterprise that supplies its own schools, yet exports the same books to Australia and creating an unfair competition model for Australian publishers selling into New Zealand.

<sup>3</sup> Ibid, p 4.21

In proffering its unquantified and ill-considered recommendations, the Productivity Commission has broken one of the key rules of good industry policy: to move slowly, and to avoid any prospect of destroying the assets built up in good faith by those who have invested under the current regulatory settings.

These are radical proposals, disguised as incrementalism. The Australian Government, and the Productivity Commission in the past, has eschewed wholesale reversal of regulatory settings, recognising that there is a primary argument for consistency, and that competition is best delivered by a large number of firms, rather than by grand economic experiments.

A signal example of this is the retention on restriction of non-pharmacist-owned pharmacies. Apart from the community benefits of this, it provides certainty of competition, rather than the unreliable assumption that larger players will pass on returns to consumers.

Australian publishing is not dissimilar from the pharmacy sector, insofar as it has invested in the development of valuable assets by relying on the consistency of industry policy.

More importantly, consumers rely on the presence of a large number of independent bookstores, rather than the benevolence of the chains and department stores. As noted in our original submission, and supported by the majority of Australian booksellers, any substantial reorientation of the territorial copyright regime will tilt the competitive advantage massively in favour of the chains, to the long-term detriment of consumers.

Unless the Productivity Commission is able to make a more complete assessment of the competitive structure of Australian publishing and book retailing, and is able to more credibly quantify the impact of its proposals, then it should report to the Government that it has no basis for such radical experimentation, and that the Government should instead engage with the industry on the development of a long-term evolutionary industry plan.

## **Key Issues**

### **1. Terms of Reference**

The Terms of Reference for this inquiry call on the Commission to “examine the present provisions with respect to the parallel importation of books — which include exceptions to copyright — having regard to, and where possible quantifying [several points, including]:

- whether the provisions amount to a restriction on competition;
- if so, the costs, benefits, and effects of the restriction;
- whether the benefits to the community from the present provision outweigh any costs from restricting competition;”

In a breathtaking move, the Commission has simply asserted the first point without supporting evidence, it has failed to quantify the second, and it has chosen to ignore the third.

Importantly, it appears that the Commission – beyond the absence of traditional economic modelling – has made two critical errors in its approach to the terms of reference:

- it has singularly failed to engage with the specific features of the content of the industry it is reviewing: i.e. that this is about books, not wheat or iron ore; and,
- as a consequence of this failure, it has not considered how competition actually takes place in the book industry: between titles; in bidding for authors; and in the many and varied approaches taken by the multitude of competing firms.

It is the consequence of this disdainful lack of attention to the competitive structure of the Australian book industry as it currently stands, that the Commission has missed the central fallacy of its 12 month recommendation.

The Commission simply appears to assume that Australian publication will persist at the current level, regardless of an incremental erosion of territorial copyright. However, as all publishers have attested, there will be a reduction in the number of local titles published.

This means a reduction in local competition. Following from which, there is no credible assumption that book retailers will import the full range of absent titles to fill gaps in the range of books.

Further to this, those titles which are imported without an Australian edition in the market will – like all currently imported titles – be priced at the retailer's pleasure, and often well above the current price. At the same time, fewer local titles means less competition and it is most likely that we will see an inflationary effect in retail pricing.

This is the type of analysis which the Commission is capable of considering, but which in its rush to publication it has simply ignored.

## **2. The Productivity Commission's Lack of Evidence**

The key argument for abolishing restrictions on the parallel importation of books has always been that this would produce cheaper books. APA research has shown, however, that the Australian book market has become highly competitive with the US and UK markets, and even the landed price of Amazon (on which no GST is payable), providing the dollar is close to its 10-year average<sup>4</sup>.

The Commission admits in its Discussion Draft that "there are insufficient data to fully describe and analyse the books market". It states that measuring the price impact of territorial copyright is "problematic", that the strength of the \$A has a major influence on price differences, and that it has had to draw "mainly on qualitative evidence together with theory" to gauge the impact of territorial copyright on Australian book

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<sup>4</sup> See attached APA news releases

prices. It has not put a figure on that impact, and its reliance on so-called 'qualitative evidence' also suggests a possible influence of ideology over commercial reality in the rationale.

In its supplementary report detailing the outcome of its UK/US/Australia price comparisons, the Commission said initially that "Taken at face value, the results together suggest that prices of some titles in Australia can be competitive with, or lower than, the price of UK or US editions. At the same time, the comparisons suggest that there are also some titles available at a lower price in the UK and US."

The Commission went on to analyse comparative prices in 2007-08, when the value of the Australian dollar was at a historically high level, in which it identified what it said were price gaps between average RRP's in Australia and the US/UK. The comparisons did not, however, take account of freight costs — a fundamental input.

And as the Commission, itself, pointed out: "... the estimated price gap (based on RRP's for 2007-08) of like editions between Australia and the UK and US, respectively, would have been eliminated at exchange rates of GBP 0.41 and USD 0.69." The 10-year average for the USD is in fact 0.69 and for the GPB 0.40.

In other words, when evidence-based testing is applied, the price argument does not stand up. The only way that abolition of parallel import restrictions will put downward pressure on book prices in Australia is by turning Australia into a dumping ground.

### **3. Impact on Demand and Literacy**

It has been argued that Australia's copyright rules reduce demand for books and impact on literacy. The Commission discounts both claims, stating:

"The cultural benefits from the creation of additional literary works that PIRs sustain could, in theory, be somewhat offset by the higher prices they give rise to. These could result in somewhat lower sales than would otherwise be the case, thus potentially reducing the dissemination of the ideas contained in the books. However, while consumers are likely to take price into account when choosing between different booksellers and different titles, overall demand for books appears to be relatively unresponsive to changes in price (chapter 2). Further, as discussed in appendix B, the Commission considers that the PIRs are unlikely to have much impact one way or the other on overall literacy levels through their effects on the affordability of books."<sup>5</sup>

What the Commission chooses to ignore in the literacy argument is the cultural impact of children's stories. Australian children's ability to acquire literacy skills would be hampered by the Commission's recommendations because they would lead inevitably to a diminution in Australian titles being published. Australian children would be reading about unfamiliar settings, unfamiliar characters, with unfamiliar spellings and foreign idioms. Learning to read is facilitated when the world in the

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<sup>5</sup> Discussion Draft, p 6.12

book matches the world around the student. Australian children need to grow up reading Australian stories, in Australian settings, with Australian characters and languages that validate the world they live in — otherwise the understanding of their culture, history and nationality will be reduced<sup>6</sup>.

#### 4. Music Industry

The reality of the cultural impact of territorial copyright is much more significant than this. In our original submission, we commented at some length on the economic and job losses in the Australian music industry when territorial copyright on sound recordings was abandoned.

The full extent of this policy decision on cultural impact goes well beyond CD sales, however. The breakthrough album release by the locally successful Australian band Powderfinger, *“Internationalist”*, coincided in 1998 with the abolition of Australian territorial copyright for CDs. The album went five time platinum locally (selling 350,000 copies). There was overseas interest. Many thought the band were on their way to becoming the new international Australian success story, in the footsteps of INXS (who’d enjoyed the benefits of the territorial copyright regime). The band had the talent, the management, the sales history and a growing fan base. The album was released in Europe and the UK. But international success escaped them.

Abolition of territorial copyright meant that their Australian label, the local subsidiary of the multinational Universal Music Group, could not bank on the payoff of having local territorial exclusivity if it supported and invested in an international release. With the security of an Australian market in doubt, Universal Music apparently did not want to take the investment risk of bringing Powderfinger to world markets. The band’s career trajectory stalled. And with it the trajectory of many other existing Australian bands, and the future of bands then unborn.

The historical growth path – pub and club gigs, local success, support for big overseas bands, cherry-picked by overseas label, overseas release, overseas tour – was cut short. Australian record labels (including the local subsidiaries of multinationals) are reluctant to invest in international success. It’s much safer to invest in locally marketing the big overseas names or past successes. The big arenas are packing in concert-goers with touring US and UK acts. Australian bands are stuck playing in pubs and clubs.

The Commission’s recommendations would have an equivalent impact on the Australian book industry, with publishers losing the investment security to risk developing new local authors, and Australia progressively ceding most of another creative industry to the US market.

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<sup>6</sup> We note on this point the comment by a Commissioner at one of the Round Tables that: “We know it’s important to you that you have kangaroos in your stories.”



## 5. Other Evidence

Those in favour of the abolition of Australian territorial copyright for books frequently cite New Zealand's lifting of restrictions on parallel imports in May 1998 as a favourable precedent for the same action by Australia. In its Discussion Draft, the Commission was more cautious, limiting itself to stating that "the weight of evidence suggests that the reforms lead (sic) to a reduction in average prices in some market segments."<sup>7</sup> In Appendix C of its Discussion Draft, the Commission did not even go that far, limiting itself primarily to reporting, without comment, the views expressed by the various New Zealand stakeholders.

The Australian Publishers Association commissioned original and independent research into the impact of the abolition of territorial copyright in New Zealand, by Castalia Limited (copy attached)<sup>8</sup>. APA was particularly interested in Castalia's views because the authors also wrote the 1998 New Zealand Institute of Economic Research report which, as the Commission has noted<sup>9</sup> underpinned New Zealand's 1998 decision. The Castalia report warns:

"Our analysis suggests that New Zealand may not be quite the poster boy for the success of parallel importing as it is often presented. We find that any changes in the price gap between New Zealand and the US and UK over the past 10 years have been within the margin of error. This view is supported by the evidence that there has been little actual parallel importing. In part, this may be because the price gap reflects actual differences in handling and production costs.

At the same time, it appears that the threat of parallel importing has made domestic publishers more risk averse and less committed to production in New Zealand. There is no doubt that if the effects of parallel importing become more pronounced, publishers would reduce the domestic titles they publish. In particular, we find that the number of commercially published New Zealand titles has been growing very slowly. The number of New Zealand titles published by the top five publishers increased less than one percent annually for the last 10 years. This growth has been considerably slower than the growth trend in other markets. By contrast, in Australia, the number of titles on legal deposit has grown by approximately 2.5 percent per year over the same period."<sup>10</sup>

The Castalia Report identifies three potential impacts from parallel importing or the threat of parallel importing from the point of view of a multi-product firm operating across international markets<sup>11</sup>:

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<sup>7</sup> Ibid, p 4.21

<sup>8</sup> *The Impact of Parallel Importing on Publishing in New Zealand*, Castalia Limited, March 2009

<sup>9</sup> Appendix C, p C.4

<sup>10</sup> Castalia, Op. cit. p i

<sup>11</sup> Ibid p 3



- Undermining the business's ability to cover its common costs
- Increasing the riskiness of a publisher's portfolio
- Reducing publishers' willingness to invest, given the presence of irreversible costs

The report notes:

"Publishing, like many other copyright sectors, is characterized by uncertainty in advance as to the revenue any given (international or domestic) title will generate. In general only a small proportion of titles will be highly successful revenue earners. Effectively, each publishing house holds a portfolio of titles and this portfolio allows them to diversify the risk across all the titles they are publishing.<sup>12</sup>"

It observes:

"In this sense, book publishing is most akin to oil and other minerals exploration. Many wells have to be drilled, and one has to accept a mix of dry and successful wells. In the oil industry, it is generally accepted that any policy measure which undermines the returns from successful wells, will increase the riskiness of the overall portfolio, and reduce drilling.<sup>13</sup>"

The New Zealand evidence presented in the Castalia report indicates that the proposed removal of territorial copyright after 12 months would increase costs without any benefits for consumers. It shows that an increase in the riskiness of the book publishing portfolio is likely to reduce domestic output even in the absence of significant parallel importing. The 12 month proposal definitely increases the riskiness of the portfolio. Books which start with a "slow burn" would have a lower upside due to the threat of parallel importing after 12 months. As a result, the overall returns from the portfolio would fall.

At the same time, while the threat of parallel importing will affect all successful titles, retailers are most likely to be interested in parallel importing immediate blockbusters. Since this will not be allowed under the 12-month proposal, there would be little actual parallel importing, and hence no effect on prices paid by consumers.

Overall, the Productivity Commission's proposal could put Australia into the same position as New Zealand — the worst of all worlds, where prices for imported titles do not fall, but the production of domestic titles declines.

## **Impact of Appropriating and Abrogating Authors' Copyright**

### **1. General**

Abolishing territorial copyright outright or 12 months after first publication would have three major financial impacts on Australian publishers:

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<sup>12</sup> Ibid p 4

<sup>13</sup> Ibid p 6

- It would significantly undermine their ability to use revenue from overseas books to which they hold Australian rights to cover their common costs. Reducing profits from overseas books reduces overall profitability.
- It would significantly increase the riskiness of their portfolio of books. Publishers cannot be sure in advance how well any one book will sell. The successes help pay the costs of the failures. We note that this seems to have evaded the attention of the Commission, so we will make it as clear as possible: the ability to identify successful books with certainty is retrospective, not prospective, and that is the source of risk for publishers. Punishing them by removing their backlist rights to the few real successes is economic vandalism of the highest order. And without the rights to publish successful international authors, they will have to reduce the risk in other ways — dropping unknown local authors or specialist titles.
- It would significantly reduce publishers' willingness to invest in irreversible costs such as infrastructure because of the increased portfolio risk — the impact of "getting it wrong" is higher when revenue is lower.

This would necessarily flow through directly to publishers' capacity to invest in Australian authors, reducing royalties available to existing authors, the capacity of new authors to break into the market, and publishers' ability to invest in more risky titles. This would result in a smaller range of books available to Australians and fewer independent bookstores. It would also result in the fewer overseas-sourced books being printed in Australia, cutting jobs in the highly-specialised book printing industry. All these impacts have been acknowledged by the Commission.

Limiting territorial copyright to 12 months effectively abolishes it for many parts of the industry. Educational and children's books require life-cycles of many years and both involve investment in teaching aids, which could not be recouped in that period. Many new books, even by established authors, don't take off in their first year. Books like Tim Winton's *Cloudstreet* or Kate Grenville's *The Secret River* (which sold five times as many copies in its second year as in its first) are obvious examples.

The Productivity Commission's recommendation insults Australian authors, devalues their creative work and diminishes their royalties. It would export Australian jobs, increase Australia's carbon footprint, torpedo one of the drivers of the Rudd Government's Education Revolution — high quality education materials meeting Australian needs — and cut production of Australian children's books.

A publisher who acquires a book obtains from an author the exclusive right to publish that book in a particular geographic territory. It's the basic business transaction that allows authors to eat, publishers to make a living, printers to survive, booksellers to flourish and a culture to thrive. Authors can sell this exclusive right to publish to a range of geographical territories. The author earns money from each of these transactions. Many Australian authors are published successfully around the world and survive on the income they receive from the variety of territories in which they are published.

In Australia, the 30-day rule has resulted in an efficient industry in which readers get books quickly at competitive prices, publishing companies invest in writers and authors have a chance of making a living from their work. There are jobs in editing, distribution, printing, marketing, bookselling, publicity, graphic arts, design, training — the list goes on. If the recommendations of the PC are accepted, all of this falls apart.

A publishing company's lifeblood is the books it has rights to sell and the confidence that they have them for the same time period as their international competitors. If an Australian publisher only has 12 months in which to recoup the considerable costs of publishing a new book, compared with a US company publishing the same book in the United States, which has exclusivity for much longer and can then sell their edition into Australia after a year, how could the Australian publisher compete?

Many books only make back a publisher's investment long after 12 months after publication. If publishers cannot get a reasonable security of return for their investment, the resources they have to foster Australian authors and illustrators will be curtailed and a vicious cycle of decreasing local investment will replace the virtuous cycle we have been experiencing since 1991.

There is a simple analogy: if you have a 50-year lease on a house, you are likely to ensure that the property is properly maintained, inside and out. You can make that investment with confidence. If you only have a 12-month lease, how much less would you invest in the house?

It's only Australian publishing companies including the Australian based multinational companies that look for new Australian voices or stories to publish. The Productivity Commission recommendations would mean that because they couldn't compete, Australian publishing companies would publish fewer Australian books and employ fewer people. The Commission admits that, if its recommendations were accepted, some Australian publishers would be forced to become more like distribution houses rather than creative, commissioning publishing houses. Is this a serious vision for the long term enhancement of Australian culture, let alone business?

Perversely, the Commission's recommendations would benefit overseas publishers. Overseas publishers will have a new market to exploit at the expense of Australians.

The world is currently wracked by an unprecedented recession and major economies are looking to creative industries to start a new wave of investment and returns. Australia has enjoyed a vibrant and creative publishing industry based on our existing copyright framework. Remove that and you remove a plank of our economic recovery at the same time as diminishing Australian culture.

## 2. Children's Books

The Commission would do well to inform itself of the history of children's publishing in Australia. Chapter 10 of *Paper Empires: A history of the book in Australia 1946-*

2005<sup>14</sup> is a good place to start. In this chapter, Andrew Fabinyi says: “I still recall my own bewilderment when I entered the Australian book world in 1939 to find that Australian children spend, in their books, Christmas amidst snow-capped mountains ... a de-nationalised or to put it more constructively, a trans-national literature should be offered to children with their first books.”

Australian children's publishing has achieved this over the past 30 years by publishing literate, unique titles and by creating strong, enduring relationships at international trade fairs where such titles are traded. By such means publishing creates both social and cultural benefits for readers. Our children are exposed to both their own and the cultural values of other nations. Through such relationships our editors are able to travel to other countries to undertake training and to bring back new ideas in both publishing and editing. Through such relationships we avoid what could so easily arise; a monoculture of literature wherein only sameness is valued.

Children's books are particularly vulnerable to the reduction or abolition of territorial copyright as the price that can be charged for a child's book is lower, though production costs are the same and in the case of picture books – higher. They have a longer sales cycle and are more dependent on sales overseas to recoup the investment. Children's books are at the low margin end of publishing. The publicity and reviews for children's books come over a longer period of time, and they have a slow build in the market, and are more dependent on awards for success, and some of the success of a book comes from educational settings which is later in the sales cycle.

Despite the lower margin, however, children's books demand a high investment from illustrators, authors, designers and publishers in both time and resources. An illustrator will often spend a year or more illustrating a children's picture book, which, given the probable return on any particular title, is a marginal investment. These books are expensive to design and to print, and the editorial process happens over several years, from conception to delivery of printed book. The printing often requires expensive techniques and finishes. Children's books are a long-term investment - many children's books released decades ago remain popular now.

Children's books are often published in series, because children commit to reading series and they appreciate the familiar reading environment. This is another feature of the long life-cycle of children's books, and generational renewal is why more money is commonly earned for these titles after the first 12 months. Each new book enhances the sales of previous books in the series, but the backlist is vulnerable to importation of the earlier books in the series which are outside parallel importation restrictions.

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<sup>14</sup> ed Craig Munro and Robyn Sheehan Bright UQP 2006

Children's books sell widely into foreign markets which means that the risk of re-importation is higher. There are also overseas book clubs that produce long runs of books in cheap formats where a re-importation would damage the author and the series.

Children's publishing is unique. Children's publishers take more frequently than do adult publishers from unsolicited manuscripts — developing and encouraging authors and illustrators found there. Many of Australia's most famous creators have been found in this way, and not through agent submissions. In order to develop works that arrive in a half-formed state or sometimes as little more than great ideas, a children's publisher must devote long hours of work and then wait, often until the book has won an award or captured the attention of a loyal band of followers or a board of studies, before sales reward either the publisher or the creator.

No Australian children's publisher expects to make money quickly. Sean Tan, for example, took many years before his seminal work, *The Arrival*, made him a star internationally and at home. Paul Jennings has become a household name among children in Australia, and yet no one could have foreseen that success. It was children, by their word-of-mouth, that slowly grew his sales to the levels they are today.

Children's books have long-term cultural and literacy benefits, and much of this benefit is not priced into the original purchase price of the book. Children's publishing is an investment in the next generation, and this investment is supported by the subsidy of the creators who are prepared to work for minimal wages in the belief that they are contributing to the cultural self-esteem of Australian children.

Territorial copyright "lite" (as envisioned by the Productivity Commission) means that, after 12 months, all that investment becomes worthless as overseas competitors can dump cheap editions into Australia. Who will bother? Where will the Australian stories for Australian children come from in this environment?

### 3. Education Books

The Commission accepts that US textbooks are considerably more expensive than their Australian equivalents, but claims that English-language textbooks in Asia sell for less than half the price of Australian editions, and if wholesaled into Australia would put "downward pressure" on Australian prices. Its evidential basis for making such assertions is very thin. The Commission does not appear to have modelled possible impacts of its proposals and has not consulted widely with the field. It ignores the realities of Australian education publishing, which needs a three to four-year revision cycle, commissions Australian academic writers and requires security of investment beyond 12 months to be able to devise and deliver the free online supplementary materials for Australian teachers and students.

In the same way that the Commission dismisses (or, at best, undervalues) the cultural significance of a trade book, it ignores the intrinsic importance of the content of education publishing — education books are not commodities to be circulated in a

market, they are *primarily* the means by which a nation and its people maintain their standard of living and progress into the future. This serious misunderstanding of the worth of education publishing is most manifest in the way the Commission blithely proposes experimenting with a possible new market for supplementary materials. This is irresponsible in the extreme, as it goes directly to the standards we all deem fundamental for our children's and grandchildren's future.

And education textbooks simply do not sell the majority of their lifetime units in the first 12 months after release. The draft recommendation for 12 month retention of territorial copyright completely disadvantages the education sector, which doesn't fit the sales definition and selling cycles that the Commission currently assumes applies to all books published and distributed in Australia. The only impact this draft recommendation can have on the education publishing sector is to crimp ongoing investment in local content and education resources. No-one can reasonably argue that the impact of removing Australian territorial copyright after 12 months can advantage the level and range of Australian education content available for students and teachers/lecturers. Any recommendation which impacts adversely on the knowledge capital of our society is clearly perilous.

The education sector publishes a raft of teacher and student resources around the core "traditional" textbook, in lock-step with both technology and the Government's own "Education Revolution" expectations. Asian markets rarely invest in publishing. They are simply distributors of international wholesalers. So they don't carry the costs of advances, royalties or printing (in many cases). They are simply not comparable companies. To allow imports from low cost countries that cherry-pick the print component alone 12 months after publication will do three things:

- Slash investment in Australian educational books;
- Make future Australian students poorer in their learning and study choices as publishers wind back the development and publishing of interactive learning sequences, self-assessment tools, podcasts, vidcasts and the like;
- Compromise the considerable export trade by Australian educational publishers to these low-cost countries as they seek to protect their legitimate markets on behalf of their authors.

The Commission's recommendations will result in a dangerous class divide in education publishing. Richer Australian students in expensive schools will be able to afford the high-quality textbooks and materials (probably imported from the US). Poorer students will have to make do with the cheaper Asian imports with no, or highly restricted, supplementary materials.

#### 4. Backlist

There are many differences between Australian distributors and those in the Northern Hemisphere (overwhelmingly that means the UK and to a lesser extent the US) when it comes to selling backlist titles. About 60% of trade books come from the US and

UK — primarily backlist — classics and books still in copyright somewhere in the world. Except in the primary-level education market, there is only a miniscule amount of importing in the UK and US. These books are printed locally and delivered to publishers' warehouses in three to five days. With large, widely-spread populations, this creates very high economies of scale for book production and distribution.

The backlist is vital in providing income for authors, as well as a wide range of books for consumers and ongoing sales for publishers. Australian publishers are large backlist importers. It is profitable and they are required by current legislation (7/90-day rule) to carry the stock. Retailers and the public will suffer if the security of the current rules is removed. Australian publishers will be overstocked on some titles and others will be unavailable. Booksellers will either have to amortise the risk of importing more copies or allow the book to disappear from Australian shelves. Publishers will become less profitable, booksellers will increasingly lose sales to Amazon as readers are forced online — where they will incur significant freight costs while helping to inflate Australia's carbon footprint — the Government will continue to lose GST revenue, the trade will shrink, and jobs will go.

When asked at the recent Round Tables about the evidence, research or modelling the Productivity Commission had to back up its assertions about the purported 'lack of competition in the backlist', it became clear that its understanding of the current arrangements were seriously erroneous, limited and skewed. Yet again, in the absence of incontrovertible evidence, the Commission has opted for bald assertion backed up by airy theory.

## Case Studies

### 1. Education Books

#### Case Study 1

As an example of the importance of territorial copyright, a small Australian educational publisher with an extensive export track record over 30 years recently experienced one of its Asian distributors trying to subvert territorial copyright. The party in one Asian country sought to undermine the publishers' contracted distributor in another Asian country (Brunei) by ordering books via the Middle East to supply a contract in Brunei that had been pursued at some expense and gained by the legitimate Brunei distributor.

Had this attempt succeeded, it would have undermined the distributor's trust in the Australian Publisher's contractual promise and incurred costs without benefit in promoting the publisher's books. The effect of this would be for the Australian publisher to lose a distributor who was costly to source and appoint and who is prepared to commit to an expensive marketing process on behalf of the publisher and its Australian authors. It also demonstrates the preparedness of low-cost operators to skew market outcomes for all parties giving themselves an immediate gain but putting at risk the long-term commercial practices that are necessary



internationally for the effective promotion and marketing of copyright works. There is no doubt that removal of territorial copyright in Australia will subject our market to these practices and their detrimental effects.

The same publisher experienced an occasion in which its New Zealand distributor sold its business and the new owner changed the nature of the business and attempted to dump significant quantities of the publisher's titles back into the Australian market. Territorial copyright was the only basis on which the publisher was able to protect the Australian authors from loss of royalties that would have occurred from this action. Australian consumers (schools) would not have gained because the Australian wholesale buyer would have kept the extra margin in selling the books within the Australian market. A similar occurrence was also experienced with a US distributor attempting the same action with the same titles.

### Case Study 2

A good example of Australian publishers' commitment to high quality and relevant teaching and learning resources can be demonstrated by looking at the history of the leading Australian tertiary introductory biology textbook, *Biology: An Australian Focus*, written by Robert Knox, Professor Pauline Ladiges, Professor Barbara Evans and Professor Robert Saint; published by McGraw-Hill Australia.

The General Biology course in Australia represents a market of approximately 15,000 students. This is amongst the smaller of the introductory higher education courses; introductory business markets, like accounting, have in excess of 40,000 students.

*Biology: An Australian Focus* is now in the final months of its third edition; and in the 15 years since inception — encompassing three significant new editions (average edition cycle approximately four years) — McGraw-Hill Australia has invested approximately \$1 million in the acquisition, development and peer review of the content, design, pedagogy and the extensive art program of this title of a 1,000-plus pages.

Some 15–20% of this investment went to producing a suite of resources to help the academics teach their courses as well as students assimilate the material. Referenced alongside the textbook, these resources are essential for teaching large cohorts of students.

In this case, teaching materials include an Instructor Resource CD Rom, encompassing an Instructors Manual and Testbank; a Digital Content Manager CD Rom including an Active Art Library, an Animations Library, PowerPoint slides, an Image Library, a Table Library and a Video Library.

The Online Learning Centre currently provides instructors and students with access to an extensive range of testing materials, a virtual laboratory, up-to-date media releases, assignment research tools and essential study partner tools. On the free Interactive Student CD Rom there are also a host of revision tools and other digital learning devices for students.

Professor Pauline Ladiges, Head of School of Botany, University of Melbourne and co-author notes:

*"Biology: An Australian Focus* is an important textbook for teaching within an Australian context. With contributions from over 100 Australian science academics and researchers and more than 100 peer-reviews it represents a significant investment by the authors, the publisher as well as the biological sciences community in disseminating relevant, up-to-date content and Australian research to a generation of Australian students."

She goes on to say:

"... teaching with material that is not relevant is much harder and certainly less inspirational for students. It also leads to poorer educational outcomes. This is why we agreed to write this textbook and the associated supplemental materials."

Suzanne Cory, Director of The Walter and Eliza Hall Institute of Medical Research states:

"Australia is fortunate to excel in the biological sciences and this book will help to ensure that this rich tradition continues to flourish. The text has been written by eminent Australian scientists who are gifted and dedicated teachers. In seeking to impart current knowledge, they illustrate the principles with many examples drawn from Australian flora and fauna. This unusual Australian focus greatly enhances the value of the book for Australian students and will also appeal to students elsewhere who are interested in the extraordinary biodiversity of this country".

McGraw-Hill will publish the fourth edition of this textbook and the associated supplementary material in 2009 and will continue to see only a marginal return on investment given the comparative market opportunity in Australia. Nevertheless, the company is choosing to go ahead with this edition and believe in providing content that is valuable for Australian students. The production value and quality of this revised offering will be as rich and comprehensive as in similar, but many times larger, sophisticated markets (for example the United States).

It is likely that under a recommended new PIR regime (with a new 12-month rule) subsequent editions may not be profitable (and therefore would not attract investment) and may not be published. This is directly due to the likelihood of an increase in overheads which would be allocated to the local publishing portfolio given the anticipated reduction in revenues from other imported US books. Perhaps a significant increase in price may be the only other option to maintaining this important text and others like it in print and available.

This unfortunate scenario may damage the ability of the community of dedicated researchers and academics to disseminate the core material relevant to their courses efficiently. We must also ask if we want our students to use meaningful Australian content or not?

It is Australian-developed intellectual property like this from many dedicated authors and educational publishers which will enhance the education revolution in our schools and universities. Quality, relevant educational content and digital resources require significant investment; they need long-term vision and a sustainable environment to prosper.

### Case Study 3

In 2005 Pearson published a competitor to Knox, an Australian adaptation of Campbell *Biology*. Campbell is the worldwide bestseller in General Biology but in Australia it was #2 in the market behind Knox. Pearson determined that in order to grow its share of the market it needed to create an Australian edition of Campbell which, like Knox, contained significantly more Australian data. Also like Knox, the development and manufacturing costs are high and profit margins slim.

Currently Knox and Campbell share the vast majority of the market between them, meaning that Australian lecturers and students are able to learn biology with the benefit of high-quality local material, thus improving their educational experience.

The existence of PIRs has provided market certainty to both McGraw-Hill and Pearson and allowed them to invest in what is a marginal market. Were the market to be opened to cheap Asian editions of US titles, including pirated editions, the loss of market share would be sufficient to wipe out both books. This is also true in other markets where Australian publishers are looking to enhance US titles with local material, again, improving students' educational experience.

## **2. Children's Books**

### Case Study 1

In 2004, Dyan Blacklock of Omnibus Books was working with an illustrator on a picture book. He liked to spend time talking with Blacklock after he had finished with the art director, and during one such conversation he dropped a notebook with the number '24' on its spine on the floor. Curious, she picked it up and opened it.

"Inside was what I can only describe as an encyclopaedia of words I had never seen, such as 'Fulgar,' 'Slothog,' 'dirgetide,' and others. This, I discovered, was a pseudopaedia of a world the illustrator had been creating for ten years — a unique world owing little to anything I had ever read in fantasy, a world that had enormous potential for publishing," Blacklock writes.

From this inauspicious start came the series, *Monster Blood Tattoo* which has now been sold into 17 territories and brought more than \$1 million dollars in foreign royalties into the country. The Productivity Commission recommends against such exports, as inconsistent with a deregulated Australian market.

This series would never have happened at all under the Productivity Commission's proposed changes to the Copyright Act. Blacklock would not have been able to

devote the hundreds upon hundreds of hours she did to help this young man develop his then-unformed story. Everything the publisher did was a gamble. Everything the author/illustrator did was a gamble. Together, they embarked on a process that required both a long build-time and a long sell-time, because he was not a writer and he needed to be shown how to take his wonderful invention and structure a story and compose a drama around it.

The book did not immediately take off in Australia until the first in the series was shortlisted for the CBCA awards which came a year after first release. This series has an American and a UK publisher, (it won the British Chamber of Commerce Export Award for 2006) and if the proposed 12-month rule had been in place Blacklock has no doubt that the US edition would also be in the marketplace competing with the Australian edition. Profitability, which in this case will come — slowly, from the release of paperback editions down the track — would be far less likely; as would the likelihood of being able to continue to publish a hardback edition of each subsequent book in the series.

Another good example of the time it takes to develop a children's author is Markus Zusak. Markus sent Omnibus an unsolicited manuscript which was noticed and published in 1999. This story, *The Underdog*, was not profitable for many years. Omnibus knew it wouldn't be, but they also recognised an outstanding talent — someone capable of writing a great book some day. Omnibus published Zusak's second book in 2000, and again this book was unprofitable — until it was shortlisted a year later for the CBCA Book of the Year award.

Omnibus sold this book to Arthur Levine, publisher and “discoverer” of JK Rowling, and at this point interest in Zusak's work went into hyperdrive. Sadly for Omnibus, he went to another publisher, but happily for Australia Zusak's work has now received international recognition and he is set for life; a true Australian writing star.

## Case Study 2

The *Dragonkeeper* series has been one of Black Dog Books' major successes. It is a multi-award winning series of titles, both here and overseas, and has sold in over 15 territories including both the UK and the US. Like any publisher, Black Dog Books depends on its successes to be able to then invest in and build new authors.

Black Dog has had a long and fruitful relationship with Carole Wilkinson. They worked with Carole over many years to build her career as a writer. Success came slowly at first. Carole first wrote readers for series Black Dog were producing for primary educational publishers. This was a valuable training ground for her — building confidence in her skills as writer.

Success in the trade was not instantaneous, but came steadily, with the sales of each new book growing. *Dragonkeeper* was the fourth trade book that Black Dog published by Carole. It was published in October 2003, and sales were initially slow, though the book was a bestseller in Readings and Gleebooks that Christmas. Sales picked up as the book was shortlisted in many awards and won several, including the

Younger Readers Book of the Year in the Children's Book Council of Australia Awards.

The third book in the series won the Children's Book Council of Australia award in August, which was almost 12 months after publication. Even though sales of this title were strong in the first 12 months, the bulk of sales have been after the 12 month period. After the first year of sales the book was used as a set text within schools and this has continued to boost sales.

The subsequent books in the series were also multiple award winners, and each new title has increased the sales of the earlier books. Black Dog re-released the three original books in the series in October 2008, which was a great success both for Black Dog Books and the author. The combination of ongoing sales and overseas advances enabled Carole to commit to full-time writing and the bulk of the sales have occurred outside the frontlist period of the first 12 months.

The Australian publisher was vulnerable to imported editions from wholesalers in the UK and US and is now vulnerable to remainders from overseas sales, some of which would be cheap book club editions which devalue the books, and the author, in the eyes of the consumer.

### **Asia as a Source of Parallel Imports**

The Commission asked for views on the suggestion that Asia could, over time, become a significant source of parallel imports for trade books and that this could put material downward pressure on Australian book prices. The Commission also referred to the possibility of low cost Asian wholesalers supplying education books to Australia.

As noted elsewhere, in the trade sector Asian markets rarely invest in English language publishing so they don't carry the costs publishers generally do. They are simply distributors of mainly local language books and limited ranges of international books.

However in educational publishing, the Australian Publishers Association does not believe that supply of low cost books from Asia is likely unless the Commission wants to licence intellectual piracy. The prospect of Asian imports will have a detrimental impact on the highly efficient supply of imported US and UK higher education titles<sup>15</sup>. As the process of estimating demand becomes highly problematic, publishers will reduce stock holdings and campus booksellers will be faced with increasing out-of-stock situations in the critical first weeks of semester. Import titles will be a mix of legitimate editions, pirated editions and adaptations, introducing confusion for students, booksellers and academics.

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<sup>15</sup> According to the University Co-op Bookshop's 2008 Supplier Statistics, 99% of titles ordered before December 31 were supplied to their outlets prior to the start of first semester.

## **Abolition of 7/90-day Re-supply Rule and Aggregation Proposal**

The Commission recommended abolishing the 7/90-day resupply rule. This provides that publishers must respond to booksellers' inquiries about availability of stock in seven days, and deliver booksellers' orders for stock within 90 days, or lose territorial copyright for the book or books in question. It recommended that if a book subject to 12-month territorial copyright became unavailable during this period, parallel importation should be permitted until local supply was re-established, or until the 12-month copyright period expired, whichever was the shorter.

Currently, booksellers can import single copies of books available in Australia under territorial copyright if requested by a customer. The Commission also recommended that booksellers should be able to "overtly" offer an aggregation service for individual orders of books under this provision.

Very little detail was offered about how either recommendation would operate. What, for example, would be the criteria for determining how a book subject to territorial copyright "became unavailable"? Who would make the determination? Would it be subject to appeal? Who would compensate publishers for unsold stock in the event of an error in the process? The lack of detail is astounding.

What is the difference between current arrangements for single-book customer orders and the aggregation process proposed by the Commission? Would the Commission's aggregation process allow large-scale speculative imports of books which subverted even the much weaker investment security provided by the 12-month territorial copyright proposal? If not, what is the point of the recommendation, given current practice and the existence of GST-free internet providers?

One might be forgiven for getting the impression that what the Commission is suggesting is that individual booksellers – for example campus booksellers who can predict demand for a certain text – could parallel import substantial volumes of books. If this type of back-door deregulation is what is envisaged, then it is a disgrace that it has been disguised around such a benign-sounding term as 'aggregation'.

Or given that the Commission's starting point on prices has proved unsustainable, is the Commission now putting forward unformed proposals in the hope of saving its blushes by seeking a consensus around a different approach? In either case, much more detail and consultation is required.

## **Review Proposal**

The Commission proposes introducing the 12-month rule in 2010, and then in the absence of Australian Bureau of Statistics data since 2002, have the ABS conduct a survey in 2014. This is fundamentally flawed because it would mean the impact of the 12-month rule in 2010 could not be measured by the ABS, as the only available comparative data would be from 2002, almost eight years earlier.

The Commission states that it has limited data on the book industry and book prices. Yet it wants to introduce changes and gather data at the same time, for review in five years. It does not stand up to the rules of logic that, in the absence of data, you change the variables in order to collect the data, and then evaluate the original system which has since disappeared!

There has never been better data on book prices in Australia than there is right now, thanks to the introduction of AC Neilson's BookScan in 2001. BookScan is a point of sale electronic data capture system. Its reports are complex because of differing book formats and differing international collection methods, but that is the nature of the industry. ABS data will provide useful information on market segments, revenue and employment but will add nothing to the current price data.

It is difficult to avoid the conclusion, therefore, that the Commission's proposal for a review of the PIRs in five years is a gesture aimed at reassuring the Government and all those who have opposed the abolition of Australian territorial copyright for books that any problems which are created by implementing its recommendation for de facto abolition can be ironed out in the future. This is fanciful in the extreme.

The APA would recommend that as a first step, the Commission might better recommend that the ABS again collect and validate Australian publishing data, so that any future review might be better informed.

## Culture

The importance of literature in human life and the special importance of Australian literary voices in Australian life were summarised recently<sup>16</sup> by a prominent Australian, who wrote:

"Fiction gives us an understanding of the motivations of people that is unmatched by any art form. And that, of course, is the beauty of fiction: it exposes every situation imaginable. Fiction provides a window into the human heart and human mind.

We all live one life, but readers can lead thousands of lives. Novels can open the mind. Researchers have argued that people who read novels and who have to think about the connection between a character's thoughts and their actions are better at social integration. Children who read novels are developing their imagination, and therefore their ability to 'think outside the square' and solve problems.

Novels can be powerful weapons in social struggles. Upton Sinclair's *The Jungle*, an indictment of life in a Chicago meatworks at the end of last century, prompted Theodore Roosevelt to urge the US Congress to pass unprecedented workplace improvement laws. *Things Fall Apart* by Chinua Achebe was an appeal to Africans and by Africans to recognise the effects that white colonialism had had on Africa, and Alan Paton's *Cry, the Beloved Country* played an important role in bringing the evils of apartheid to the attention of the world.

Closer to home, you can't help but think that Australia would be a different place if it wasn't for some of our iconic novels. To take just two: Thomas Keneally's *The Chant of Jimmie Blacksmith* and Xavier Herbert's *Capricornia* are important contributions to

<sup>16</sup> Sydney Morning Herald, 11 March 2009



our thinking on aboriginal relations. My favourite Australian novel, *My Brother Jack*, is as wonderful a social history of the first 50 years of last century as a history textbook would be.”

The writer was the Hon. Chris Bowen, MP, Assistant Federal Treasurer, who commissioned the study into parallel importation of books now under way. Fortunately, one of the many people who read Mr Bowen’s essay was one of the Australian authors he mentioned, Thomas Keneally. Mr Keneally responded two days later. He warned:

“As with any reader, I am all for less costly books, but I would urge Mr Bowen and his parliamentary colleagues to look hard at whether abolition of our copyright has any chance of resulting in cheaper books or of making them more available.

I believe other factors are already reducing book prices here and will continue to do so without our needing to put Australian territorial copyright to the sword. For in abolishing it we shall bring a new measure of desolation to all the publishing, printing, warehousing and other facilities that depend on it.

Before anyone says, ‘Of course he’d tell you that, it’s in his interest,’ let me point out that established Australian authors already published in Britain and the US have least to lose if Australian copyright vanishes. Should it happen, they would still be published in Britain, and then of course imported into the newly declared cultural colony of New Holland.

The writers who will lose are the younger or emerging writers, who will be at first entirely dependent of an Australian publisher and Australian copyright. If Parliament bears away this copyright security, Australian publishing will shrink to the scale that existed when I began writing in the cultural cringe days of the early 1960s.”

There you have it, in the proverbial nutshell. The Assistant Treasurer of the nation takes the time to stress the importance of fiction and Australian voices, and one of our most prominent literary voices responds with a warning that the loss of Australian territorial copyright would have dire implications for Australian fiction and the Australian book industry.

Their arguments, to a major extent, summarise many words written about this issue over the last few months.

The Commission has responded in section 6 of the Discussion Draft with some comprehensive reporting on cultural aspects of the book industry. It stated that it agreed that the total cultural value of books and literature was “significant”<sup>17</sup> (although some of its analysis rang false, for example the suggestion<sup>18</sup> that books “can also provide educational and social benefits through improving literacy ...” The whole point of literacy is to be able to read text, of which books are a central part: there is little entertainment in reading the Tax Act, important though it might be).

Ultimately, however, the Commission is let down by the limited toolset it believes is available to it. It states:

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<sup>17</sup> Discussion Draft, p 6.2

<sup>18</sup> p 6.1

- “The cultural value that people gain by reading books is likely to be largely reflected in consumers’ demand for those books, that is, the prices they are willing to pay.
  - It is the additional value to the broader community that is the appropriate focus of any government support for the industry.
- To the extent that the Parallel Import Restrictions (PIRs) increase returns to publishers and authors, they provide incentive for the creation of additional Australian books, increasing cultural benefits to Australia
  - But the unpriced ‘externality’ component of these cultural benefits is unlikely to be large, and PIRs do not target the cultural value of books effectively.”<sup>19</sup>

What is an “externality”? The Commission explains:

“While much of the total cultural value of a book will ... be reflected in its market value, there is also likely to be a component that is not. In particular, where one person’s purchase and consumption of a book generates benefits for others (aside from the author, publisher etc, who of course receive payment for their work), unpriced benefits, or ‘externalities’ in economic parlance, can be said to arise. It is these external benefits (and costs) or activities that provide the strongest rationale for governments to support (or, in the case of external costs, discourage) activities.”<sup>20</sup>

The main way cultural externalities operate, the Commission argues<sup>21</sup>, is through impact on stocks of social capital, measured by the way in which books diffuse cultural norms and enable individuals to be more connected to society and more productive within it. There may also be some benefits from promoting Australia as a more marketable identity to the world. But:

“Overall, while books and literature on the whole provides a range of cultural benefits to Australians, a narrower range of these benefits represent a genuine source of cultural externalities. Given a well developed market for books in Australia, most of the cultural value of books is likely to be internalised by those who buy and read books, and as such will be reflected in the book’s market value.”<sup>22</sup>

So there are cultural externalities and as the Commission also acknowledges, educational externalities. They are “policy-relevant, but unlikely to be large”<sup>23</sup> (a remarkable and curiously qualitative assessment by the Productivity Commission.) And they arise not from the existence of a book *per se*, but from its dissemination<sup>24</sup> (which, oddly, seems to suggest

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<sup>19</sup> p 6.1

<sup>20</sup> p 6.9

<sup>21</sup> p 6.9

<sup>22</sup> p 6.10

<sup>23</sup> p 6.14

<sup>24</sup> p 6.13

that a book can be disseminated without first existing, thus neatly doing away with the whole messy process of writing, illustrating and publishing).

When asked at a recent Round Table to quantify the ratio of the cultural value inherent in a book's price compared to the social value deemed to be an externality by the Commission, it couldn't. Yet again, the Commission's theoretical models are hollow or completely disengaged from the realities of the industry at hand.

Ultimately, the Commission's limited economic toolkit has taken it on a roundabout but fruitless journey in assessing the contribution to Australian culture from the thriving and competitive national book industry.

The Commission has isolated two externalities, held them up to the economic light, and measured their value, in a mysterious and unspecified way, as "unlikely to be large".

Compare that with Mr Bowen's assessment that "... Australia would be a different place if it wasn't for some of our iconic novels."

The Commission has measured, using a ruler with no graduations. The Minister understands. The difference between the two should not be allowed to drive a change to copyright rules with far-reaching impact on the national interest and in particular the book industry.

### **Australian Publishers Association Recommendations**

The Australian Publishers Association recommends that:

1. The Productivity Commission recommends retaining the 1991 rules relating to the duration of territorial copyright and the requirement for Australian publication within 30 days of overseas publication to establish that copyright.
2. The Productivity Commission recommends that the Commonwealth Government should instead engage with the Australian book publishing industry on the development of a long-term evolutionary industry plan.



Maree McCaskill  
**Chief Executive Officer**