Unbinding book barriers

Why Australia should scrap parallel import restrictions on books

IPA Backgrounder

Tim Wilson

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Free people, free society

Executive Summary

The Productivity Commission is currently completing an Inquiry into whether Australia's parallel import restrictions (PIRs) on books should be liberalised. This Inquiry is the fifth government-sponsored inquiry since the late 1980s, and follows the liberalisation of PIRs on sound recordings and computer software.

PIRs limit the capacity for an intellectual property (IP)-protected work to be imported into Australia without the permission of the rights holder. PIRs are contentious because they are part of Australia's intellectual property regime and are applied to copyrighted books, patented inventions and trademarked goods. But unlike patents and trademarks, Australia is not required to have PIRs on books, and they are not necessary.

Australia's PIRs are not a form of IP protection. Australia's PIRs are a trade barrier designed as IP protection. They should be liberalised. And liberalising them would not undermine territorial copyright.

Australia's PIRs on books are in excess of Australia's international obligations to the *Berne Convention for the Protection of Literary and Artistic Works* and the World Trade Organisation's *Agreement on Trade-Related Aspects of Intellectual Property Rights.* They are not necessary because unlike industrial property (patents and trademarks), copyright is an automatically afforded right to the owner, and with it royalty payments for the use of their work. The only justification for PIRs on books is for counterfeit works.

It is questionable that they are providing any benefit to Australian authors, the book publishing and the book printing industries. New Zealand provides a comparable example to demonstrate the benefits from their removal.

In 1998 New Zealand removed their PIRs on copyrighted works and the following has occurred:

- A modest decline in printing industry jobs, and at a much slower rate of decline than experienced in Australia while maintaining its PIR regime,
- Recent data shows no significant changes in employment levels in the publishing sector,
- No appreciable decline in the number of titles published by local authors, and in some cases there has been a modest increase,
- The proportion of books published domestically to those imported has remained consistent with Australia's ratio,
- No significant downturn in investment in fixed assets for New Zealand's printing industry, and data from Statistics New Zealand shows that there has been growth roughly in line with investment in fixed assets for the manufacturing industry overall,
- The vast majority of publishing companies are New Zealand-owned and small operators.

The strongest indicator of the impact of liberalising New Zealand's PIRs is on the outward looking nature of the industry. Comparable to equivalent behaviour by Australian industries liberalised in the 1980s and 1990s, the New Zealand industry has invested in technology to enhance productivity and competitiveness, and focused on export opportunities. Since the liberalisation of PIRs New Zealand book exports have nearly doubled.

Similarly, the experience from the liberalisation of PIRs in Australia's sound recording industry also provides an indicator of the potential impact. Despite claims that removal of PIRs would significantly hamper Australia's music industry, data from the agency responsible for the distribution of royalty payments shows an increase in the number of, and total amount given to, Australian writers and publishers following the removal of PIRs. And data from ARIA shows that following liberalisation the average price of CD album has decreased by nearly a third.

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Abbreviations

APA	Australian Publishers Association
COAG	Council of Australian Governments
IP	Intellectual property
PIR	Parallel import restriction
PSA	Prices Surveillance Authority
The Act	*The Copyright Right 1968*
The Commission	The Productivity Commission
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Definitions

Berne Convention	The World Intellectual Property Organisation-Administered Treaty that governs the international framework for the recognition of copyright
Parallel import	Importing a non-counterfeited intellectual property-protected innovation (patent), branded (trademark) or work (copyright) without the right-holder's permission
Paris Convention	The World Intellectual Property Organisation-Administered Treaty that governs the international framework for the recognition of industrial property, including patents and trademarks
TRIPS Agreement	The Treaty that governs the international framework for the recognition of intellectual property under the World Trade Organisation

1.0 Introduction

Since the 1980s the Australian government has progressively reformed the Australian economy by promoting liberalisation of industry to improve its capacity to compete in a global economy.

The Productivity Commission is currently completing an Inquiry into whether the government should liberalise parallel import restrictions (PIRs) on books. In 1991 the Hawke government partially liberalised PIRs on books. In its March 2009 draft discussion report on the current inquiry the Commission proposed a series of measures to further liberalise Australia's PIRs regime, but it stopped short of full liberalisation.

This report will assess the nature of Australia's PIR regime for copyright. In particular it will assess the validity of PIRs for books under Australia's IP regime and whether PIRs are necessary for IP protection; or whether they are a trade barrier.

Further, this report will assess the potential impacts the further liberalisation of Australia's PIRs on books will have on investment and jobs, looking specifically at New Zealand and the trends following its liberalisation of PIRs on copyrighted works. This report will also consider the limited evidence following the liberalisation of PIRs on sound recordings in Australia.

2.0 Parallel import restrictions in Australia

Parallel importation is the process of importing a non-counterfeited intellectual property (IP)-protected innovation (patent), brand (trade mark) or work (copyright) into Australia, without the right-holder's permission.

In November 2008, then Assistant Treasurer Chris Bowen MP requested that the Productivity Commission complete an inquiry into Australia's PIRs on books. A copy of the terms of reference for the Inquiry is provided in Box 1.

This Inquiry is the fifth since the late 1980s.[1] Prior to this inquiry, the most significant Inquiry into PIRs on books was completed in the 1980s by the then Prices Surveillance Authority (PSA). The PSA's 1989 report argued that these restrictions were not serving the industry or consumer interest and argued for their repeal.[2]

At that time The Act outlawed all commercial parallel importation of copyrighted material, except for personal use. The PSA's report found that PIRs were allowing industry to release titles in Australia later than the rest of the world, and that they were also charging Australians substantially higher prices than the rest of the world.

The Hawke government chose not to progress with full liberalisation of parallel importation of books, and instead proposed a series of amendments to The Act. The 1991 reforms introduced what is known as the '30 day' rule and the '7/90 day' rule.

The '30 day' rule requires publishers to make available a title within 30 days of its publication internationally. If they do not, they will not enjoy parallel importation rights for the copyrighted work, and booksellers can parallel import the title.

The '7/90 day' rule requires that if a bookseller requests to be restocked with a title and the publisher does not respond within 7 days, or does not supply stock within 90 days, the bookseller can parallel import a reasonable quantity of the title. Both the '30 day' and '7/90 day' rules apply for the entire life of the copyrighted work.

Booksellers can also import a single copy of a book to meet a specific order, and individuals can also parallel import a single copy of a work.

Following the 1991 reforms the PSA completed another inquiry which found the reforms improved the dates that titles were released in Australia, and subsequently argued for a full repeal of PIRs.[3]

Following the release of its draft report of the current Inquiry, the Productivity Commission is now recommending further changes to The Act to liberalise PIRs for books, including:

- Limiting PIR restrictions for a title to only 12 months from the date of its first publication,
- Abolishing the '7/90 day' rule; and
- Allowing the aggregation of individual import orders by booksellers.[4]

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[1] Productivity Commission, November 2008, "Copyright restrictions on the parallel importation of books", Productivity Commission Issues Paper, Commonwealth of Australia, Melbourne, Australia, p4
[2] Prices Surveillance Authority, December 1989, "Inquiry into book prices", Final report, PI/89/3, Commonwealth of Australia, p7
[3] Prices Surveillance Authority, 1995, "Inquiry into Book Prices and Parallel Imports". Commonwealth of Australia, Canberra, Australia, n61
[4] Productivity Commission, March 2009, "Restrictions on the parallel importation of books", Productivity Commission Discussion Draft, Commonwealth of Australia, Melbourne, Australia, pxiv

Box 1 | Inquiry terms of reference[5]

The Productivity Commission is requested to undertake a study on the current provisions of the *Copyright Act 1968* (the 'Copyright Act') that restrict the parallel importation of books and report within 6 months of receiving this request.

Context

The Council of Australian Governments (COAG) has endorsed a new competition reform agenda designed to enhance Australia's longer term growth prospects. To advance this work, a number of priority areas have been identified for review. The Productivity Commission is requested to provide advice on the potential for reform with respect to the parallel importation of books.

Background

The Copyright Act gives authors (which includes creators of literary and artistic works) a number of exclusive rights over their original works which provide an economic incentive to promote the creation and distribution of new works for the benefit of the community.

Within these rights, copyright owners through their licensing arrangements, are able to prevent the importation into Australia of books that have been lawfully published in another country (ie 'parallel imports'). The operation of these provisions potentially results in higher prices and less availability of books to the disadvantage of Australian consumers.

In 1991 amendments were made to the Copyright Act restricting the use of the rights with respect to imported books. Essentially, the amendments permit the parallel importation of lawfully published books where there has been a failure to supply the Australian market once the book has been published in another country. These changes were intended to address concerns about delays in obtaining copies of overseas books.

However, there are a range of views about whether the provisions result in significantly higher prices for Australian consumers compared to other markets.

Scope of Study

In undertaking this study, the Commission is 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:

- the extent to which the provisions promote and achieve the objectives of the Copyright Act;
- 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 provisions outweigh any costs from restricting competition; and
- any identified options for reform, including non-legislative approaches, and any transitional arrangements.

Key Considerations

In conducting the study the Commission shall have regard to:

- the impacts on all relevant industry groups including authors, publishers, printers, distributors, retailers, consumers, libraries and educational institutions (including small and medium business);
- the intended objectives of the parallel importation provisions within the overall policy framework of the Government including competition, intellectual property, trade and industry policies;
- approaches adopted in comparable other countries;
- relevant rights and obligations under international treaties to which Australia is a party; and
- the conclusions and recommendations made in other relevant reviews and the views of relevant stakeholders.

The Commission is to undertake an appropriate public consultation process including the invitation of public submissions.

[5] Productivity Commission, March 2009, "Restrictions on the parallel importation of books", Productivity Commission discussion draft, Commonwealth of Australia, Melbourne, Australia, ppiv-v

3.0 Parallel import restrictions: Necessary for intellectual property rights or a trade barrier?

The Commissions inquiry has prompted a significant response. While opinions vary, the majority can be broken down into two major groups - those in favour of reforms (primarily book retailers and importers) and those who wish to maintain the status quo (primarily printers, publishing houses and authors). To date the Commission has received 553 submissions.

The arguments in favour of keeping and removing parallel import restrictions are already well known. The arguments are summarised in Box 2.

Box 2 | Summarised arguments for and against removing PIRs*

For PIRs on books	Against PIRs on books
• A core component of territorial copyright	• Act as a trade barrier and a form of industry protection
• Undermines capacity for publishing industry to foster Australian authors	• Unnecessarily raises the price of books for consumers
• Supports jobs in the printing and publishing industries	• Restricts available titles on sale through retail stores
• Provides certainty for companies to invest in expensive technology that has a long repayment timeline	• An unnecessary addition to territorial copyright

* may not reflect all arguments, just those that were regularly cited
Sources: Submissions to the Productivity Commission's Inquiry

But in assessing the relative merits of PIRs on books it is important to understand whether they are a necessary component of Australia's IP regime, or whether they are a trade barrier designed as part of Australia's IP regime.

Under section 51(xviii) of the Commonwealth constitution the Federal Parliament has responsibility for "Copyrights, patents of inventions and designs, and trade marks". As a result the commonwealth government has responsibility for administering Australia's IP regime.

PIRs are not uncommon in Australia's IP regime, or that of other countries. Under Section 13 of the *Patents Act 1990* a patent holder is given "the exclusive rights, during the term of the patent, to exploit the invention and to authorise another person to exploit the invention". In the dictionary of that Act "exploit" is defined as "make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things".[6]

Similarly, the *Trade Marks Act 1995* provides a registered trade mark holder the power under that Act to the exclusive rights of a registered trade mark, including, under Part 13, stopping

[6] Commonwealth of Australia, "Patents Act 1990", available at http://www.austlii.edu.au/au/legis/cth/consol_act/pa1990109.txt/cgi-bin/download.cgi/download/au/legis/cth/consol_act/pa1990109.rtf

another party importing a good that "infringes, or appears to infringe, a registered trade mark".[7]

And PIRs exist in the *Copyright Act 1968* under Section 37 that states copyright has been "infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia".[8] But just because the three major IP laws all include PIRS, it does not mean that they are all warranted.

Traditionally IP is broken up into two distinct groups – industrial property and copyright. Industrial property (patents, trademarks, industrial designs etc.) is unique from copyright because it is a registered right and for it to be established and enforced an application must be made to the relevant competent authority.[9] Copyright is different because it is an automatically recognised form of IP and right holders do not need to make an application to have their rights established, recognised and enforced.[10]

And the difference is obvious when international IP law is considered in light of Australian IP law. Australia is a party to numerous IP treaties, but the principle treaties relevant to PIRS include the World Intellectual Property Organisation (WIPO)-administered treaties - *The Paris Convention for the Protection of Industrial Property*[11] and *The Berne Convention for the Protection of Literary and Artistic works*[12]; and the World Trade Organisation's (WTO) *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS).[13]

The Paris Convention specifically deals with PIRs on registered rights, including patents and trademarks. Under Article 5*qauter* of the Paris Convention "the patentee shall have all the rights, with regard to the imported product, that are accorded to him", and Article 9 covers trademark PIRs by stating "All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection". And patent PIRs are reinforced under TRIPS which states under Article 28 that Parties will "prevent" the importing of a product patent or process patent.

But the Berne Convention is silent on PIRs. Instead stating under Article 16 that only "infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection". Similarly, Article 51 of TRIPS addresses infringing copies, but not parallel importation of copyrighted works.

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[7] Commonwealth of Australia, "Trade Marks Act 1995", Parliament of Australia, Canberra, Australia, at http://www.austlii.edu.au/au/legis/cth/consol_act/tma1995121.txt/cgi-bin/download.cgi/download/au/legis/cth/consol_act/tma1995121.rtf

[8] Commonwealth of Australia, "Copyright Act 1968", Parliament of Australia, Canberra, Australia, at http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133.txt/cgi-bin/download.cgi/download/au/legis/cth/consol_act/ca1968133.rtf

[9] The competent authority to register industrial property in Australia is IP Australia, http://www.ipaustralia.gov.au

[10] Wilson, T., April 2008, "Intellectual Property Matters", IPA Backgrounder, Institute of Public Affairs, Melbourne, Australia, at http://www.ipa.org.au/library/publication/1210829978_document_intellectual_property_matters.pdf

[11] World Intellectual Property Organisation, March 1883, "Paris Convention for the Protection of Industrial Property", Geneva, Switzerland, at http://www.wipo.int/export/sites/www/treaties/en/ip/paris/pdf/trtdocs_wo020.pdf

[12] World Intellectual Property Organisation, September 1886, "Berne Convention for the Protection of Literary and Artistic Works", Geneva, Switzerland, at http://www.wipo.int/export/sites/www/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf

[13] World Trade Organisation, 1995, "Agreement on Trade-related aspects of intellectual property rights", Geneva, Switzerland, at http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

PIRs on patents and trademarks are a necessary component of Australia's property rights regime. Under the Paris Convention and TRIPS, patent and trademark holders are entitled to register their rights in each country, but they are not automatically granted them, and in many cases they are not exercised because of cost barriers for registration or the questionable potential for a commercial market. Because they need to be registered in every individual country where protection is sought, without PIRs an innovation or trademarked product could arrive in Australia from a country where the property right is not recognised and no royalties are paid to the property right holder.

But the reverse is the case with copyright. Because copyright is an automatically registered right, the obligation to pay royalties to the copyright holder is automatic within the union of contracting Parties to the Berne Convention. The royalty rates may vary depending on the country, but the copyright holder is paid royalties and therefore the only PIRs that legitimately need to be enforced are those that limit infringing copies where no royalty is paid.

It should be recognised that international treaties on IPRs only provide a minimum standard for IPR protection. But equally when a national government exceeds its obligations from a Treaty, it must also have sound and comprehensive evidence of the benefits.

Australia's PIRs on books go beyond Australia's international obligations to stop infringing copies instead stopping all parallel imports without the copyright holder's permission. Their objective is not to uphold Australia's IP obligations, but to act as a trade barrier to protect the domestic publishing and printing industries.

Importantly, removing PIRs will have no impact on territorial copyright, beyond protection unnecessarily afforded as a trade barrier.

4.0 Liberalising Australia's parallel import restrictions

As outlined in Section 2.0, before the 1991 reforms to the *Copyright Act 1968,* Australia's PIRs were afforded for all works for the life of the copyright, except for personal use.[14] The PSA's 1989 report recommended the full liberalisation of PIRs, but the 1991 reforms only partially liberalised PIRs and has left Australia with the regime operating today.

It is difficult to assess the potential impact of a liberalised PIR-regime for Australia, and many of the submissions made to the Commission's Inquiry suggest the consequences will come at the expense of Australia's book industry, but there is surprisingly little evidence to support their claims.

Part of the challenge is that there is limited data available, for example:

- The ABS has not collected data for a number of years on books.
- The impact of liberalisation of PIRs on books will need to consider the impact on authors, publishers and printers, but the inquiries into the liberalisation of PIRs on sound recordings in 1998 focused mostly on musicians and composers, and not the printers of sound recordings.[15]
- There is only one major comparable economy that has liberalised its PIRs that can provide instruction on the likely impact – New Zealand.

New Zealand is a comparable market because it faces many of the unique challenges Australia faces – a small domestic consumer population (by world standards), equivalent cost structures and standards-of-living, geographic isolation and English as its first language. Similarly, Australia and New Zealand have a comparable retail supply of domestically published books at 58 per cent[16] and 60 per cent[17] respectively. And following a report by the New Zealand Institute of Economic Research (NZIER), the New Zealand government liberalised its PIRs for copyright protected works in 1998.[18]

There are many claims by opponents of liberalising Australia's PIRs that New Zealand's liberalisation delivered a disastrous outcome for the industry. But the data shows otherwise, and any negative impact was modest in comparison to the overall positive contribution made to the industry. Similarly, the limited data from the liberalisation of PIRs on sound recordings in Australia also supports the argument that PIRs should be liberalised.

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[14] Carey, S., July 2008, "Between two worlds: Australian publishing on the horns of an import dilemma", Publishing Research Quarterly, Springer Press, v23, n4

[15] Senate Legal and Constitutional Affairs Committee, 1997, "Copyright Amendment Bill (No.2) 1997", Parliament of Australia, Canberra, Australia, at http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/1996-99/copyright/report/contents.htm

[16] Australian Bureau of Statistics, August 2005, "Book publishers", 1363.0, Commonwealth of Australia, Canberra, Australia, p4

[17] Moore, D., Volkerling, M. & van der Scheer, B., November 2007, "MED Parallel importing review: impact upon creative industries", Report for Ministry of Economic Development, Wellington, New Zealand, p12

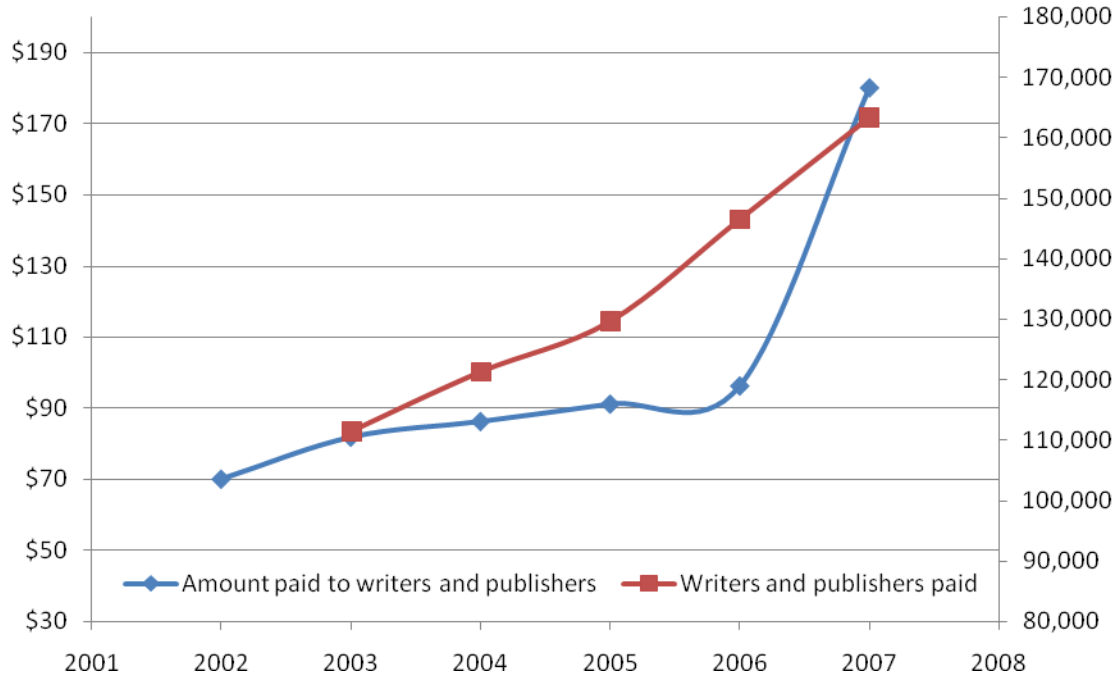
[18] Ministry of Economic Development, May 2008, "2008 Parallel importing cabinet paper: Background", Wellington, New Zealand, at http://www.med.govt.nz/templates/MultipageDocumentPage____35587.aspx and Moore, D., Volkerling, M. & van der Scheer, B., November 2007, "MED Parallel importing review: impact upon creative industries", Report for Ministry of Economic Development, Wellington, New Zealand, p3

4.1 The impact on authors

A regular claim made by publishers and authors throughout this inquiry is that increased competition from parallel imports, particularly remainders,[19] will decrease profitability in the Australian market and result in publishers reducing the works commissioned from Australian authors.

It is a highly speculative argument with no evidence to support the claim. Similar claims were made prior to PIR liberalisation in New Zealand. But there is no evidence to demonstrate it actually occurred. A 2004 report commissioned by the NZ Ministry of Economic Development found that, "with the exception of children's books, there was no evidence to support any claim of total investment in publishing local works by the subsidiaries of multinational publishers falling dramatically".[20] And since liberalisation there has been an increase in the number of New Zealand books published.[21]

Graph 1 | Amount paid (AUD$ millions) to, and number of writers and publishers paid by APRA-AMCOS

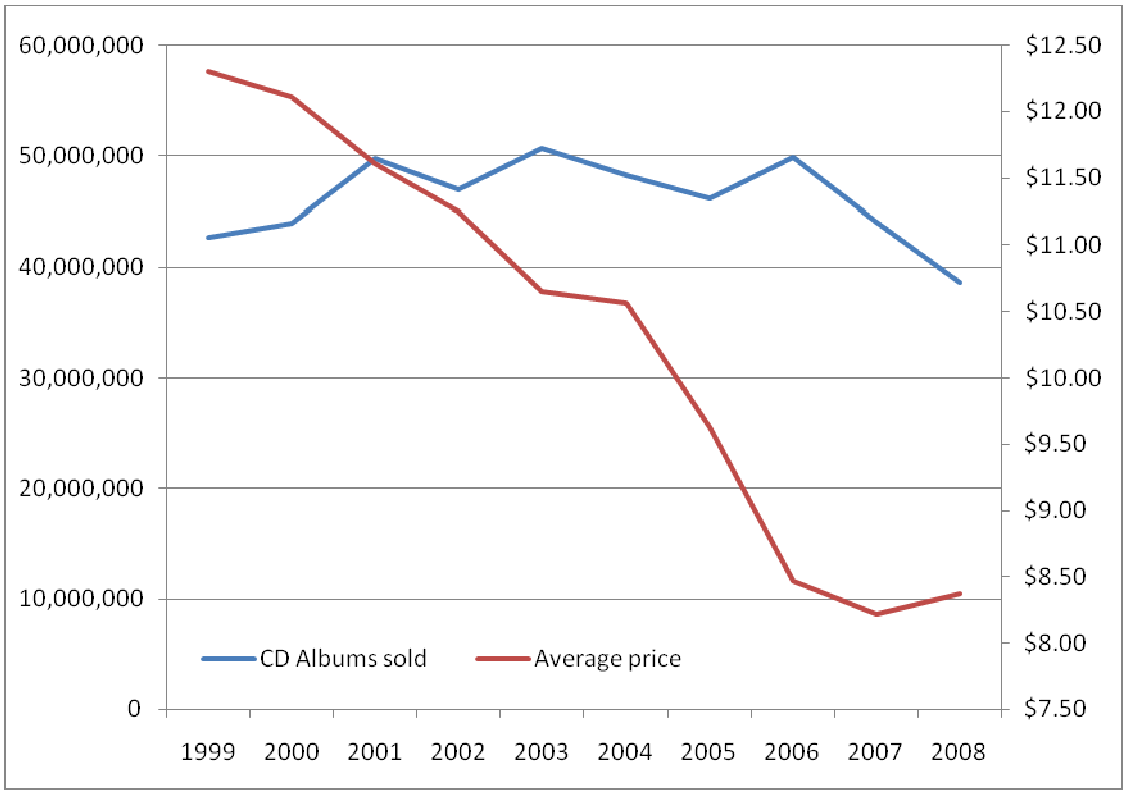


Note: Royalty payments made exclude foreign income
Source: Adapted from APRA-AMCOS, 2008, "Making Music Matter: Year in Review", 2007-2008 Annual Report, at http://www.apra-amcos.com.au/downloads/file/ABOUT/APRA_AYearInReview.pdf and APRA-AMCOS, 2008, "Year in Review", 2006-2007 Annual Report, at http://www.apra-amcos.com.au/downloads/file/About%20APRA/APRA_AYearInReview0607.pdf

And trends since the liberalisation of Australia's sound recording PIRs also point in a similar direction. Royalty payments for writers and publishers of music are administered through an organisation jointly managed by the Australian Performing Right Association and the Australian Mechanical Copyright Owners' Society Limited (APRA-AMCOS). As Graph 1 demonstrates there has been strong growth in the years following the removal of PIRs for the amount paid and number of persons receiving royalty payments from sound recordings.

[19] Over-produced books parallel imported at discount prices
[20] Network Economics Consulting Group, October 2004, "The impact of parallel imports on New Zealand's creative industries", Final Report, Prepared for the Ministry of Economic Development, p38
[21] Mackenzie, J., 2001, "Government loses plot on books", New Zealand Herald, 8 May, at http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=187632

Graph 2 | Australian CD Album sales and their average wholesale price



Source: Adapted from Australian Recording Industry Association, "Australian sales by unit (physical product) for the years ended 31 December", Australia, at http://www.aria.com.au/pages/documents/physical_sales_x_units.pdf and Australian Recording Industry Association, "Australian sales at wholesale value (physical product) for the years ended 31 December", Australia, at http://www.aria.com.au/pages/documents/physical_sales_x_value.pdf

And the data on royalty payments in Graph 1 juxtaposes strongly with the data on the annual sales and average price of CD Albums since PIR liberalisation. As Graph 2 demonstrates, the number of CD albums sold has decreased slightly between 1999 and 2008, after an initial jump; but the average wholesale price of CD albums has decreased by 32 per cent in the same time period.

It should be noted that the data in Graph 1 includes total royalties, including royalties from non-CD sound recordings (eg advertisements and internet sales), and Graph 2 only includes CDs. But the trend is clear.

4.2 The impact on industry structure and book sales

Another concern raised throughout the Productivity Commission's Inquiry is that the Australian industry will struggle to survive under the potential weight of parallel imports. Such a scenario seems unlikely.

Many of the concerns raised about the potential viability of the industry come as a result of Australia sharing a common language with two major English-language book producing markets – the United States and United Kingdom. The argument follows that, unlike many other countries, language does not act as a natural barrier to parallel imports from our major competitors. But Australia does have a natural barrier - geographic isolation which increases the costs of imports against domestic production. Further the foundations for a viable

domestic book-consuming market exist – Australia has a stable, well-educated and affluent population.

And despite claims that a domestic industry cannot survive, even with a fifth of Australia's population the New Zealand experience demonstrates otherwise. As shown in Table 1 more than a third of publishing companies were actually established around or following the removal of New Zealand's PIRs.

Table 1 | Date of founding of book publishing companies, 2003

Year	Number	Proportion
Pre-PIRs liberalisation		
Up to 1950	**26**	**8%**
1951 – 1980	**54**	**16%**
1981 – 1990	**78**	**23%**
1991 – 1995	**63**	**19%**
Post-PIRs liberalisation*		
1996 – 2003	**117**	**34%**

***PIR liberalisation was introduced in 1998**
Source: Adapted from Dialogue Consultants Ltd., October 2003, "Exports of New Zealand published books", Report prepared for the Ministry for Culture and Heritage, Helensville, New Zealand, p9

Table 2 | Ownership structure and staffing breakdown for New Zealand book industry, 2003

Ownership structure		Staffing breakdown		
Ownership	**Per cent***	**Number of staff**	**% of publishers**	**%of staff**
Wholly New Zealand owned	91%	0 – 1	64%	6%
Part New Zealand owned	1%	2 - 10	29%	20%
Wholly overseas owned	4%	10+	7%	73%

* excludes not counted
Source: Adapted from Dialogue Consultants Ltd., October 2003, "Exports of New Zealand published books", Report prepared for the Ministry for Culture and Heritage, Helensville, New Zealand, p8

And despite concerns that removal of PIRs will simply leave the Australian publishing industry to multinationals, the reverse occurred in New Zealand. Table 2 outlines the ownership structure and staffing breakdowns for the New Zealand book industry – an industry dominated by small, New-Zealand owned, publishers.

And the evidence shows that there has been no impact on book sales. As outlined at the start of this section, Australia has a slightly lower percentage (58 per cent) of domestically published books than New Zealand (60 per cent). But the difference is that New Zealand has liberalised its PIRs, and Australia has not. And the most recent data provided in Table 3 shows that there is still growth in the numbers of New Zealand titles published.

Similar conclusions have been reached by the New Zealand government. According to a 2008 Cabinet submission on parallel importing there have been no detrimental affects to the New Zealand book industry from parallel importing; and commercial parallel importing is generally used for "niche and backlist titles".[22] Further the trends in the book publishing industry have

[22] Ministry of Economic Development, May 2008, "2008 Parallel importing cabinet paper: comment", Wellington, New Zealand, at http://www.med.govt.nz/templates/MultipageDocumentPage____35588.aspx

moved away from the back catalogue of books towards a greater focus "on new books in search of a hit which may launch a series or an author".[23]

Table 3 | New Zealand titles published

Type	2007	2008
Professional / technical	498	603
Educational	467	453
Poetry & drama	92	77
General non-fiction	96	76
Lifestyle	21	38
Fiction	21	36
Children's	22	19
Sports	18	19
NZ Pictorial	12	17
History	14	15
Biography	20	12
Reference	5	4
Total	1,286	1,369

Source: Colmar Brunton, September 2008, "Survey of book publishing in New Zealand 2008, Report prepared for Book Publishers Association of New Zealand, p23

4.3 The impact on jobs and investment

Significant arguments against further liberalising of PIRs is that liberalisation will have an impact on jobs in the printing and publishing sectors, and that companies will not have the capacity to invest in technologies to be internationally competitive. For example, the Printing Industries Association of Australia submission to the Productivity Commission's review stated:

> *"If we take into account historical industry input-output and industry multiplier analysis, the estimated production losses (if PIRs are liberalised) ... could result in the loss of between 1400 and 1600 jobs throughout the Australian economy, including several hundred book printing related jobs".*[24]

Similarly, the Griffith Press submission argued:

> *"Over the last 10 years, as a result and because of the 1991 changes to the Copyright Act, Griffin Press has been able to invest heavily in global best practice equipment and employee training to lift its competitiveness in a global market. This investment would not be able to be recouped if the rules were abolished".*[25]

But there is scant evidence to support either of these claims. And in all likelihood the reverse is true.

[23] Network Economics Consulting Group, October 2004, "The impact of parallel imports on New Zealand's creative industries", Final Report, Prepared for the Ministry of Economic Development, p38
[24] Printing Industries Association of Australia, January 2009, "Submission: To the Productivity Commissions' Copyright Restrictions on the Parallel Importation of Books Study", Auburn, Australia, p6
[25] Griffin Press, January 2009, "Submission by Griffin Press: Productivity Commission Study: Copyright Restrictions on the parallel importation of books", Australia

4.3.1 Investment

Investment is vital to ensure that an industry remains viable and competitive, and for an industry like book publishing and printing that involves investment in the latest book printing technologies to achieve maximum productivity. The concerns raised by the industry in their submissions is that in a market where they are forced to compete against parallel imports the available funds will be diminished, and the stability and certainty that PIRs provide to the market will make the capacity for printers to invest in new technologies harder. And according to the Australian Publishers Association, New Zealand is supposed to provide evidence of that problem.

Referring to the Castalia report, the Australian Publishers Association argued that if Australia follows New Zealand the impact of removing PIRs would:

- Undermine the business's ability to cover its common costs.
- Increase the riskiness of a publisher's portfolio.
- Reduce publishers' willingness to invest, given the presence of irreversible costs.[26]

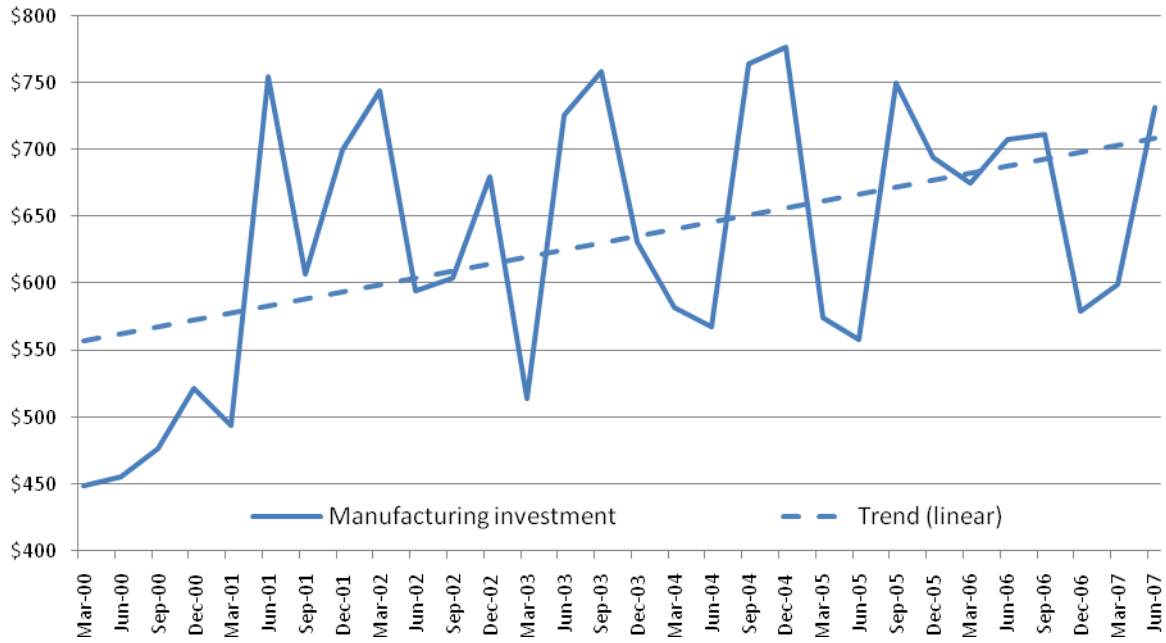
But the APA and Castalia provide no substantive evidence for the claim. And the evidence from studies in New Zealand shows the opposite.

In its quarterly economic survey of manufacturing Statistics New Zealand includes data for additions to fixed assets for the industry overall and a breakdown for each of the individual sectors. The data from the quarterly economic surveys are presented as Graphs 3 and 4 According to data since the beginning of 2000 the New Zealand manufacturing industry and its printing, publishing and recorded media sector have both attracted significant fixed asset investment.

While the printing, publishing and recorded media breakdown extends beyond books, the data clearly shows an upward trend in fixed asset investment. Importantly, the data for the printing, publishing and recorded media sector also show a comparably level of fixed asset investment with the manufacturing industry overall.

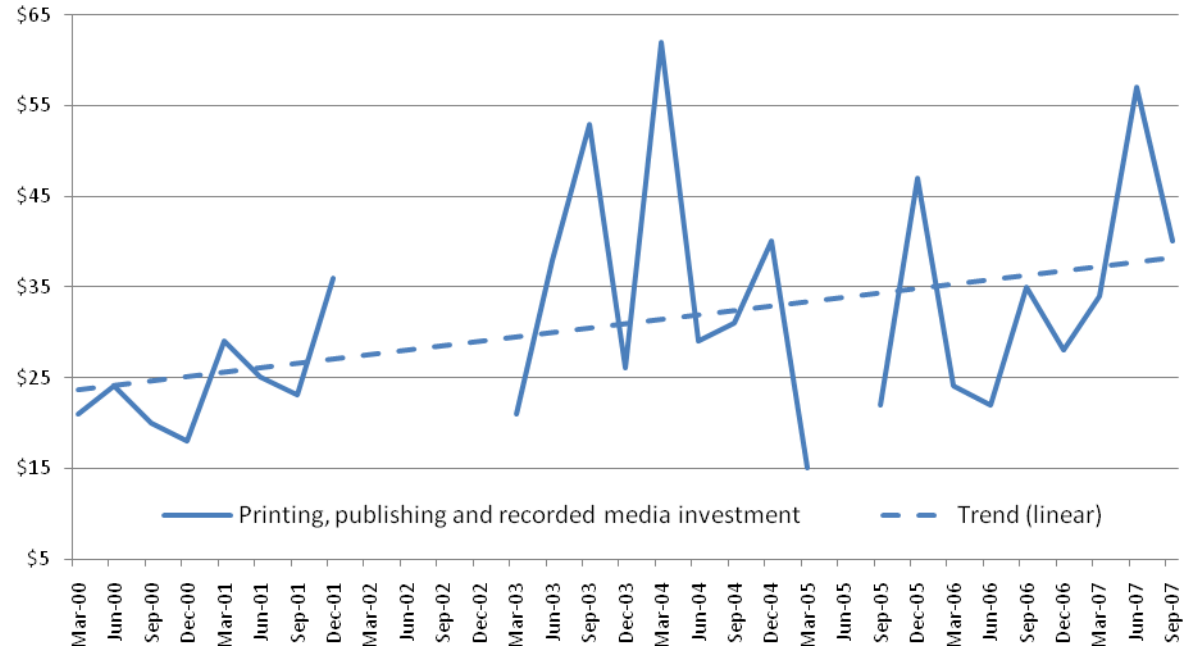
[26] Australian Publishers Association, April 2009, "Supplementary Submission: Productivity Commission: Restrictions on the parallel import of books", Ultimo, Australia, pp8-9

Graph 3 | Additions to fixed assets in the New Zealand manufacturing sector, NSD$ million



Source: Statistics New Zealand, 2009, "Economic Survey of Manufacturing", Auckland, New Zealand, at http://www.stats.govt.nz/products-and-services/info-releases/eco-survey-manufac-info-releases.htm

Graph 4 | Additions to fixed assets in the New Zealand printing, publishing and recorded media sector, NSD$ million



Note: Some data not available
Source: Statistics New Zealand, 2009, "Economic Survey of Manufacturing", Auckland, New Zealand, at http://www.stats.govt.nz/products-and-services/info-releases/eco-survey-manufac-info-releases.htm

4.3.2 Jobs

Providing sustainable jobs requires that an industry is built on sound foundations. And that includes being able to compete in a global market place. In response to proposals to further liberalise PIRs the industry has proposed that jobs will unnecessarily be put at risk because the industry will not be competitive and up to $80 million in revenue could be lost.[27]

Table 4 | Approximate employment in PIR-dependent book industries, Australia

Industry sector	Employment (Approx)
Publishers	5,000
Printers	2,000

Source: Productivity Commission, March 2009, "Restrictions on the parallel importation of books", Productivity Commission Discussion Draft, Commonwealth of Australia, Melbourne, Australia and State Government of Victoria, January 2009, "Productivity Commission's Study into Copyright Restrictions on the parallel importation of books", Melbourne, Australia, p5

As the Productivity Commission identified, part of the challenge of making any assessment on the potential impact on jobs in the printing and publishing sector is the lack of data.

The most recent ABS data puts employment in book publishing at 5,300.[28] And Table 4 includes approximate figures for employment provided by the Commission and Victorian government, though the extent of their multiplier effect is unknown. However, despite industry fears, the New Zealand experience has shown that following liberalisation the trend has been job growth and decentralisation of the industry. A Colmar Brunton survey found that employment in the publishing sector increased from 885 people in 2007 to 1,002 in 2008. Some of the strongest growth occurred in owner-operated publishing houses and there was an increase in the decentralisation of publishers away from capital cities in favour of other regions. [29]

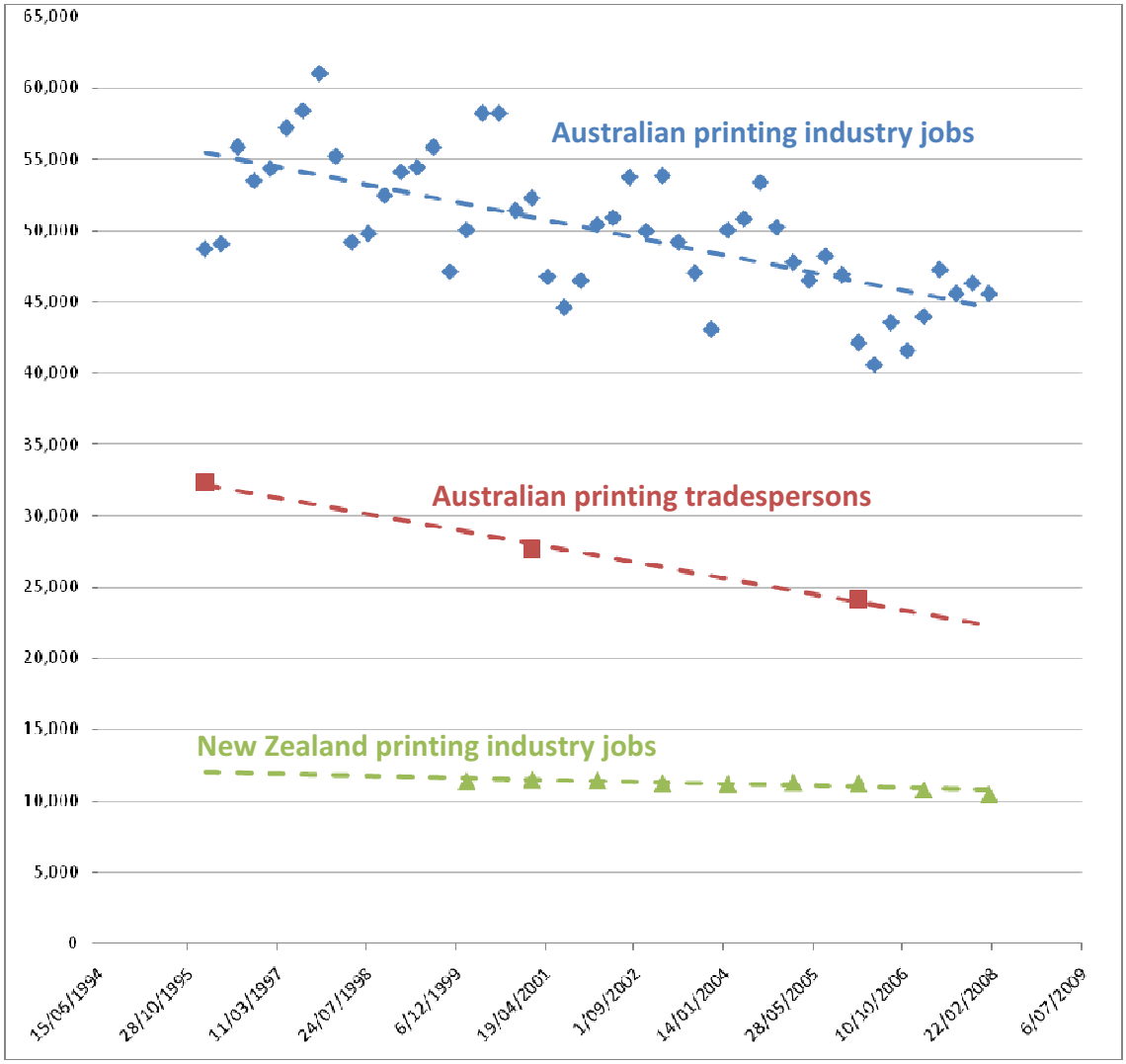
But the printing industry shows a different trend. Graph 5 provides data on Australian and New Zealand printing industry employment levels. Both industries' employment levels are in decline; but the rate of decline is substantially slower in New Zealand.

Ultimately the only way to provide sustainable jobs for the sector is to have an internationally competitive industry. And that is achieved having high productivity, a lower-cost base and meeting consumer demand.

One of the key findings of the 1989 PSA report was that excessive PIRs encouraged the industry to be non-responsive to consumer demand. Principle concerns were that extensive PIRs were promoting delayed release of books, limiting the range of books supplied in the marketplace and increasing prices. Following the reforms, to continue enjoying PIR protection the industry was required to increase their range of offerings and bring release dates to roughly the equivalent of the first international release date. The incentives were clear.

[27] Steger, J., 2009, "Open-market push worries writers, publishers", The Age, March 20
[28] Australian Bureau of Statistics, August 2005, "Book publishers", 1363.0, Commonwealth of Australia, Canberra, Australia, p5
[29] Colmar Brunton, September 2008, "Survey of book publishing in New Zealand 2008, Report prepared for Book Publishers Association of New Zealand, p2

Graph 5 | Employment levels in the Australian and New Zealand printing industries



Source: Australian Bureau of Statistics, 2009, "Labour Force, Australia, Detailed, Quarterly" 6291.0.55.003, Commonwealth of Australia, Canberra, Australia, at http://www.abs.gov.au/AUSSTATS/abs@archive.nsf/log?openagent&6291006.xls&6291.0.55.003&TimeSeriesSpreadsheet&52911170AE5F2BB8CA25757D00135143&0&Feb2009&19.03.2009&Latest; Australian Bureau of Statistics, 2006, "Employment in culture, Australia, 6273.0, Canberra, Commonwealth of Australia, Canberra, Australia at http://www.abs.gov.au/AUSSTATS/subscriber.nsf/log?openagent&62730_2006.pdf&6273.0&Publication&6A0842636FC03C4CCA2573FB000BCD2D&0&2006&27.02.2008&Latest and Statistics New Zealand, 2009, "Employment size groups for enterprises-(ANZSIC 06)", Provided by Statistics New Zealand

The experience was similar in New Zealand after it scrapped PIRs all together. According to the Network Economics Consulting Group report:

> *"the main impact of liberalisation is that by legalising parallel imports, those imports have been strengthened as a real competitive threat to incumbent and authorised distributors and wholesalers. Faced with this threat, suppliers have improved their performance in providing more competitive terms and conditions of supply and therefore reduced the need to engage in any substantial volume of parallel importing".*[30]

[30] Network Economics Consulting Group, October 2004, "The impact of parallel imports on New Zealand's creative industries", Final Report, Prepared for the Ministry of Economic Development, p54

And the consequence has been that the New Zealand book sector has become more competitive and export-orientated. Of the $204 million turnover of the New Zealand book industry nearly 60 per cent, or $117 million, is generated by exports.[31] And as Table 6 demonstrates, the real growth in exports occurred in the years following the removal of PIRs.

Table 6 | New Zealand book exports, NZD$

Pre-PIRs liberalisation			Post-PIRs liberalisation					
1990	1995	1997	1998	1999	2000	2001	2002	2003
$32	$35	$37	$38	$43	$39	$60	$57	$54

Source: Adapted from Dialogue Consultants Ltd., October 2003, "Exports of New Zealand published books", Report prepared for the Ministry for Culture and Heritage, Helensville, New Zealand, p14

And it should be noted that these changes occurred during a period in which the industries were also under increasing competitive threats from a growing international trade in counterfeit products and the rise of internet retail sales through websites such as Amazon.com.

This trend is comparable with the direction Australian industries took following liberalisation in the 1980s and 1990s. Instead of closing they invested in technology, achieved productivity growth and focused on export opportunities.[32]

There is no reason to believe that if further liberalisation of PIRs on copyrighted works took place that a similar outcome would not be achieved in Australia. And if it does, it will provide sustainable long term jobs.

[31] Dialogue Consultants Ltd., October 2003, "Exports of New Zealand published books", Report prepared for the Ministry for Culture and Heritage, Helensville, New Zealand, p1

[32] Centre for International Economics, May 2009, "Benefits of trade and trade liberalisation", Prepared for the Department of Foreign Affairs and Trade", Canberra, Australia

5.0 Conclusions

The evidence shows that the current proposals by the Productivity Commission to liberalise Australia's PIR regime are sound, and probably do not go far enough.

In making a judgement about the comparative merits of liberalising PIRs it is vital to understand whether PIRs are a necessary component of Australia's IP regime, or whether they are a trade barrier designed as part of Australia's IP regime. This report concludes they are the latter.

Australia's PIRs are in excess of Australia's obligations under the two treaties that cover copyright – The Berne Convention and TRIPS. And it is entirely consistent with Australia's obligations, and the function of a workable IP regime, to remove PIRs on copyrighted books, but maintain them on industrial property because of the difference in the process for utilising the exclusive rights that they confer. The only justification for imposing PIRs in copyrighted books is to stop the importing of counterfeits. And removal of PIRs would have no impact on Australia's territorial copyright.

However, if New Zealand is an indicator, the likely benefits for the Australian book industry are large. Faced with increased competition the industry is likely to further invest in new technologies that will make it more internationally competitive and put it in a better position to export. There are also likely to be no major job losses in the publishing industry, and jobs could grow if the industry seized the opportunities that liberalisation provides. And while New Zealand has lost printing industry jobs since liberalisation, the same has been experienced in Australia at a faster rate.

Finally, despite the claims of authors that they would be negatively affected by PIR liberalisation, the evidence from the liberalisation of PIRs on sound recordings shows the reverse. In the years following liberalisation of PIRs on sound recordings in Australia there has been an increase in the total vale, and number of people to whom, royalty payments are being paid for sound recordings.

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About the author, Tim Wilson

Tim Wilson is the Director of the IP (intellectual property) and Free Trade Unit at the Institute of Public Affairs – the world's oldest free market think tank. His areas of policy expertise include trade, investment, IP, globalisation, and innovation. In particular he has completed research on the role of IP as an incentive to stimulate innovation for low-carbon technology and pharmaceuticals.

He is regularly published in Australian and international newspapers and journals, including the *Wall Street Journal*, *Australian Financial Review* and *The Australian*. He is a frequent commentator on television and radio, including as panellist on ABC1's current affairs program *Q&A* and Joy 94.9's media and current affairs show *The Spin*.

In 2009 he was honoured to be recognised by Australia's national daily broadsheet, *The Australian*, as one of the ten emerging leaders of Australian society.

He is a member of the Department of Foreign Affairs and Trade's IP Industry Consultative Group, and Associate for IP and Development at the Australian APEC Study Centre. Tim also works as a Senior Consultant for a strategic communications firm, SDA Strategic.

Tim has completed a Masters of Diplomacy and Trade majoring in International Trade from the Monash Graduate School of Business and a Bachelor of Arts majoring in Public Policy and Politics from Monash University. He has also completed a Diploma of Business and the IP Summer School at the World Intellectual Property Organization Academy. He has also completed the Global Health Diplomacy Executive Program and the WTO, International Trade and Development Program at the Institut de Hautes Études Internationales et du Développment, Geneva. He is also a trained carbon accountant.