

AUSTRALIAN PUBLISHERS ASSOCIATION

SUBMISSION ON

COMPETITION POLICY REVIEW

DRAFT REPORT

17 NOVEMBER 2014

Professor Ian Harper
Chair
Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

The Australian Publishers Association thanks the Panel for the opportunity to comment on the preliminary findings of the Competition Policy Review.

Competition drives the Australian publishing industry. It has delivered a diversity of published content to Australian consumers. It has driven investment and innovation in the Australian book industry including developments in the digital delivery of educational materials and a vibrant literary culture.

We share the Panel's ambition for a 'fit-for-purpose' competition policy that makes markets work in the long-term interests of consumers and we support a number of its recommendations. The Panel writes that competition sits well with the values Australians express in their everyday interactions. They include the expectation that markets will encourage choice and responsiveness and offer us variety, innovation and quality, but they also include an expectation that markets will be fair. It is in the interests of those values that we also recommend some modifications to the findings of the draft report.

Yours sincerely,



Louise Adler AM
President



Michael Gordon-Smith
Chief Executive

ABOUT THE AUSTRALIAN PUBLISHERS ASSOCIATION

The Australian Publishers Association (APA) is the peak industry body in Australia for publishers of books and journals, hard copy and electronic publications. Established in 1948, the APA serves all Australian publishers large or small, commercial or non-profit, educational or trade; locally or overseas owned. The Association represents over 90% of the industry based on turnover.

THE COMPETITION PRINCIPLE AND POLICY AIMS: A CRITICAL PERSPECTIVE

The APA supports the competition policy aims as outlined in the Draft Report. In particular, the APA agrees that competition policy should:

- Make markets work in the long-term interests of consumers
- Foster diversity
- Encourage innovation and entrepreneurship and the entry of new firms
- Promote efficient investment
- Secure standards of access and equity.¹

However, particularly in the area of intellectual property, there are risks that a narrow approach will not produce the beneficial outcomes wanted.

Competition: theory, context and the publishing industry

The concept of competition seems simple. However, the operation of competition in economic reality, and in much post-classical economic thought², is complex and at times ambiguous. As one economist put it “There is probably no concept in all of economics that is at once more fundamental and pervasive, yet less satisfactorily developed, than the concept of competition.”³ Unless a sophisticated model of competition is used, that adequately accommodates the details of market structure and production realities, the resulting analysis and any recommendations based upon it will not necessarily deliver the stated competition policy aims of lower prices, increased product availability and greater consumer choice.

The need for a sophisticated model is especially acute in the area of copyright.

Copyright and competition in the publishing industry

The publishing industry is a core copyright industry⁴. It is based upon a trade in intellectual property ownership across territories through an international copyright system that recognises and protects the rights and investment of copyright owners and the rights and income of authors. This is a system that has developed over centuries to provide a foundation of property rights that creates

¹ *Competition Policy Review Draft Report*, September 2014, p 4

² See for example Edward H Chamberlin *The Theory of Monopolistic Competition*, (Harvard University Press, 1956),

³ Paul McNulty’s article ‘Economic Theory and the Meaning of Competition’ (The Quarterly Journal of Economics, Vol. 82, No. 4 November 1968) p 639

⁴ WIPO 2003, *Guide on the Surveying the Economic Contribution of the Copyright-Based Industries*, Geneva, p29

markets and thereby innovation, investment and growth. Substantial changes to parts of this system are not without risk and should not be made without a wholistic perspective of their impact.

It is tempting but misleading to construe the copyright of an author or publisher as a restraint on trade. This frequent characterization⁵ encourages a simplistic response. It is very helpful to some rhetorical purposes, but it does not provide a fair analysis of the features of intellectual property rights. A right to exclude in intellectual property can be regarded as being “no different in principle from the right to exclude in physical property...no more a monopoly than is the right to exclude others from using your barn”.⁶

Current state of play

Despite the massive structural changes, global economic contractions and the impact, both positive and negative, of digital technologies, the book industry has continued to thrive in Australia. In 2013, over 28,000 new titles were published in the Australian market⁷ - an increase of over 13% from the previous year. This is an increase in titles across the whole industry; major and medium-sized publishers have increased their output over the past year and some of the increase can be attributed to the increase in micro- and self-publishers. These statistics in part attest to the investment of publishers in the domestic publishing sphere.

Since 1968 when the *Copyright Act* was brought into effect, Australian law has recognised the right of copyright owners to control the distribution of their products in Australia. The rules were amended in 1991 to ensure that these reasonable rights to copyright owners serving the Australian market did not result in titles being unavailable to Australian consumers if overseas publishers ignored the relatively small Australian market. In 1991, the 30/90 day rule was introduced. It stipulated that:

- If an Australian copyright owner either first publishes a book in Australia or publishes in Australia an overseas publication within 30 days of its release date, that publisher establishes territorial copyright and can generally prevent others from importing that book.
- Or to put it another way, territorial protection is lost if the book is not published in Australia (and made available for purchase) within 30 days of its overseas publication. There is, therefore, no restriction on importation.
- The 90-day element of the rule provided that publishers must restock a title within 90 days of any retail demand to avoid losing their territorial copyright privileges.

Since 2012, the Australian Publishers Association and the Australian Booksellers Association have entered into an industry-wide agreement known as the Speed to Market Initiative, voluntarily reducing the 30/90-day rule to 14/14. Most major titles are now released simultaneously, so that there is no delay for Australian consumers. There is wide agreement that this agreement has removed the remaining concerns about availability and is operating effectively.

⁵ See for example the ACCC Submission 1 regarding parallel importation, *Competition Policy Review Draft Report*, September 2014, p 88

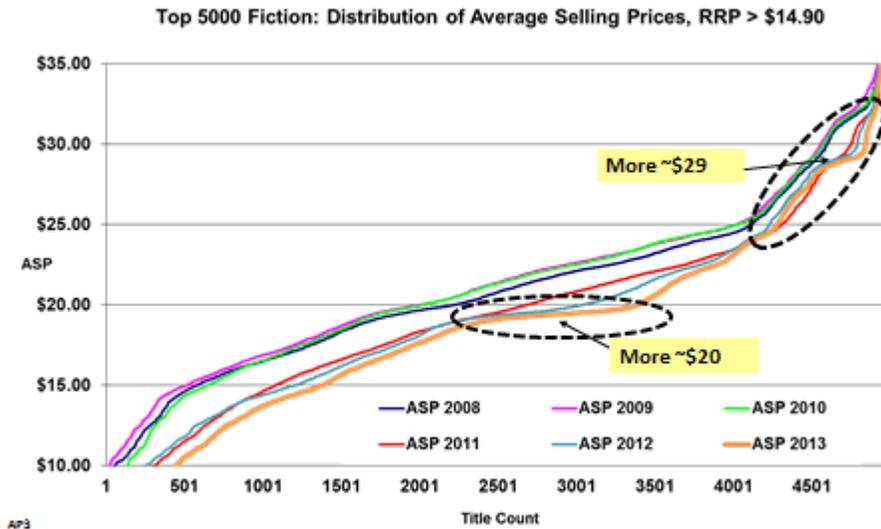
⁶ Frank H. Easterbrook, ‘Intellectual Property is Still Property’, *Harvard Journal of Law and Public Policy*, Vol. 13, 1990 p 113

⁷ Think Australian <http://issuu.com/bpluspmag/docs/thinkaustrian2014>

Currently:

- There is no barrier to individual consumers importing books for non-commercial purposes through the many online retail websites that currently exist.⁸ In that sense, individual consumers already have a world of choice.
- Over the past decade there has been significant downward pressure on physical book prices to the benefit of the Australian consumer. This has been as a direct result of the high level of domestic and international competition that functions in the current market structure.

2013 ASP down on 2012, more around \$20 & \$29



9

- Most top titles are sold in the Australian market at comparable prices to other territories.
- The Australian consumer often enjoys a better speed to market result than many other territories and it is the only territory with stipulated supply turnaround deadlines.¹⁰

The Australian publishing industry is the most successful creative industry in Australia. It is not government supported through grants and has not sought the refuge of tariffs in imported goods. The industry has not just survived but thrived in a competitive market – and is increasingly positioned as an exporter of innovative educational content¹¹ and great Australian writers to the world.

⁸ *Copyright Act 1968 (Cth)* ss37 and 38

⁹ Source: Nielsen Bookscan

¹⁰ *Copyright Act 1968 (Cth)* ss44A and 112A

¹¹ For example, Cengage Learning have had success with the export of Primary Literacy series.

REPORT RECOMMENDATIONS

Our comments are directed to three key recommendations of the Panel that directly address the publishing industry:

- Draft recommendation 7 – Intellectual property review
- Draft recommendation 8 – Intellectual property exception
- Draft recommendation 9 – Parallel imports

Our responses have been developed through consultation with our members and collaboration with key stakeholders.

Draft Recommendation 7 – Intellectual property review

The Panel recommends that an overarching review of intellectual property be undertaken by an independent body, such as the Productivity Commission.

The review should focus on competition policy issues in intellectual property arising from new developments in technology and markets.

The review should also assess the principles and processes followed by the Australian Government when establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.

Trade negotiations should be informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed IP provisions. Such an analysis should be undertaken and published before negotiations are concluded.

The APA welcomes any opportunity to examine the tenets of the copyright framework on which the publishing industry rests. It should be noted, however, that there have been numerous reviews of copyright – most recently by the Attorney General's Department¹² and the Australian Law Reform Commission¹³

Should another review of intellectual property be undertaken, at further considerable public expense, we suggest that it should not be undertaken by the Productivity Commission alone. Intellectual property is a complex and contested area of policy, about which there are many divergent perspectives, all of which should be comprehended within any wholesale review. To provide comprehensive advice to government, any further review would benefit from having from the outset a multi-disciplinary approach, encompassing legal understanding of this complex corpus juris and a broad economic perspective that covers the complex intersection between innovation, entrepreneurship and competition in a digital world.

¹² Online Copyright Infringement Discussion Paper, July 2014

<http://www.ag.gov.au/Consultations/Pages/Onlinecopyrightinfringementpublicconsultation.aspx>

¹³ Copyright and the Digital Economy, July 2013 <http://www.alrc.gov.au/publications/copyright-and-digital-economy-dp-79>

Draft Recommendation 8 – Intellectual property exception

The Panel recommends that subsection 51(3) of the CCA be repealed.

The recommendation to repeal the subsection exempting intellectual property from the Consumer and Competition Act is premature, given the recommendation above to review intellectual property. It would introduce greater uncertainty for rights holders which is likely to discourage further new investment and new entrants into markets in which the main assets are intellectual property.

Draft Recommendation 9 – Parallel imports

Remaining restrictions on parallel imports should be removed unless it can be shown that:

- they are in the public interest; and
- the objectives of the restrictions can only be achieved by restricting competition.

Australia's current parallel importation restrictions are a low-impact intervention in the market that is not fundamentally anti-competitive. They encourage competition amongst authors and publishers that benefits Australian consumers and is in the wider Australian public interest.

Parallel Importation Restrictions: how they operate

Parallel importation restrictions have a very limited application in the market. They only apply to the importation of commercial quantities of a title that a publisher holds the rights to publish in Australia. And even when a publisher holds those rights, in order to obtain the right, they must make the title available to the Australian market within a short time of its release anywhere in the world.

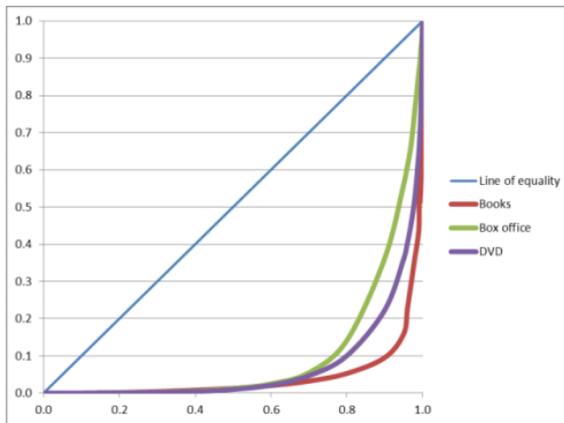
The formal 'speed-to-market' agreement between Australian publishers and retailers requires publishers to make titles available within 14 days. In other words, Australian copyright holders have only a very limited right to exclude parallel imports.

The restrictions on the parallel importation of books therefore do not reduce the availability of titles to Australian consumers. To the contrary, they provide the property right framework that allows local publishers to make more titles physically available within the relatively small Australian market than would be the case without them.

The parallel importation restrictions appear as a significant restraint on competition only from a perspective with an overly narrow view of the market. The alleged restraint imposes a small limit on intra-title competition. Most titles have a very large number of close substitutes. Consumers remain free to obtain books from any market in the world, and the restrictions have little if any effect on the elasticity of demand.

It is important to note that the book industry exhibits high 'blockbuster' effects. A recent study by Jock Given and Marion McCutcheon of entertainment markets in Australia found that the book industry had a very high measure of concentration of product sales.¹⁴ Even more than in other copyright-based industries, a very small number of titles are responsible for the great majority of revenue:

¹⁴ McCutcheon, Marion, Given, Jock. News and Media Research Centre, University of Canberra; 2013. *Heads and tails: the long tail in Australian media markets.*



Sources: GfK Australia, MPDAA, Nielsen Bookscan

The authors measured the Gini coefficient for books and found the result to be 'very robust, and insensitive to growth in titles.' A sample for 2011 of the top 50,000 titles showed a coefficient of 0.88. The book sector was the most product-concentrated of the media considered and showed 'the most narrowly-defined head'.

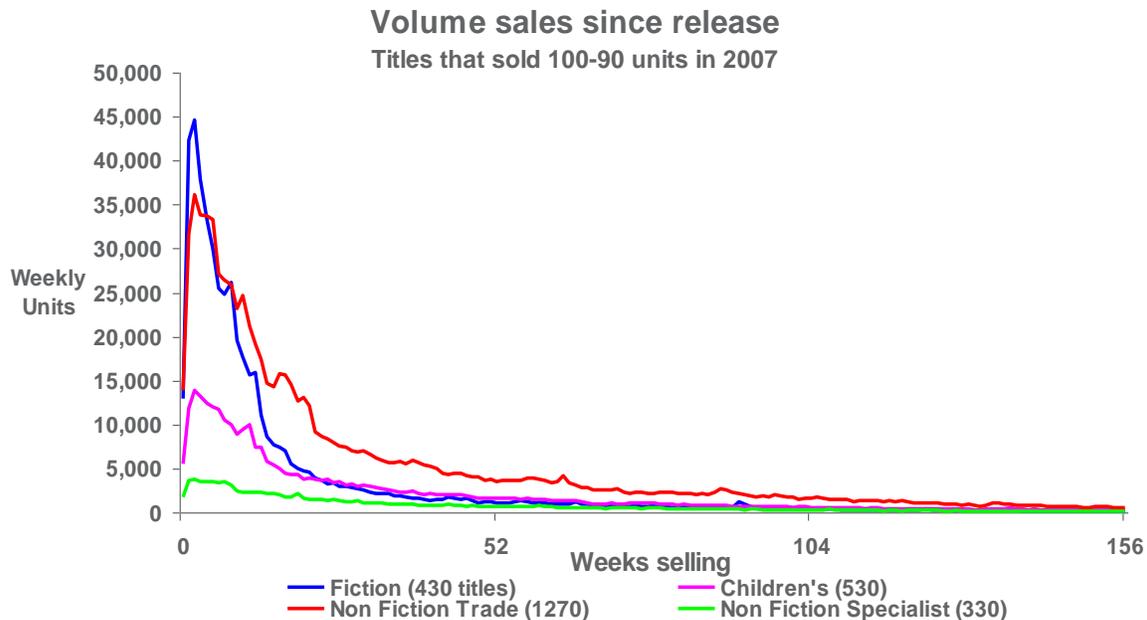
This feature of the industry makes it absolutely necessary that publishers invest in a portfolio of titles. It also means that it is extremely important that any regulations affecting the industry recognize that need for portfolio investment and apply reasonably to the case of most average titles, not merely to the very small number of outliers and individual hits. Conclusions about the industry should not be reached on the basis of the examples of the extreme cases of the major hits. For a very small number of titles, there is a very high level of consumer demand such that even very similar titles may no longer behave as close substitutes. Any market power produced by one of the very small number of these highly successful titles has not been acquired by anti-competitive behaviour, but through intense competition with other authors and their publishers. Consumers always have access to a very large number of alternatives and for the large majority of titles, demand is highly elastic and there is a wide range of potential substitutes. Any regulations should be made on the basis of the behaviour of the large majority of products, not by focusing on the extreme and unusual case.

Parallel importation restrictions prevent free-riding and therefore help maintain the incentive for authors and the publishers to whom they have licensed Australian rights to invest in the creation and use of their assets. They also support the common practice of providing sale-or-return terms for retailers, reducing the risk needed by retailers to present new authors to potential readers. Territorial copyright operates to increase consumer welfare. It provides an incentive sufficient for publishers to invest in the creating and marketing of products, for which there is some demand, that free-riding would make unlikely to be produced.

The barriers to entry for publishing may be lower now than they have ever been. Removing the restriction on parallel importation would remove the value of an Australian right and risk reducing the number of titles published in Australia. Without the intellectual property right, a publisher considering whether to publish a title in Australia will need to discount their forecast of potential revenue because of the possibility of titles imported from overseas by suppliers who have avoided the promotion and marketing costs. If even a small number of these decisions result in decisions

not to publish, this will result in a progressive reduction in the number of titles available in Australia, reducing the range and variety of titles physically available for purchase by Australian consumers.

Like other copyright industries, the book industry faces a constant need to reinvent its core assets. Consumer demand for all but the most successful titles is relatively short-lived. An analysis of the sales pattern of 2600 titles in 2008 showed a consistent pattern. For fiction titles, the sales of the first seven weeks were half those of the first twenty-six, and half the sales of the first year were achieved in the first eight weeks.



Source: The Nielsen Company, presentation to 2008 ABA Conference

The consumption behaviour of readers creates the inescapable fundamentals of the market and publishing companies face a continual requirement to invest in the creation of new assets and to take further risks. Publishers do not have the option of protecting their existing assets and seeking to prevent the creation of new or competing titles. The current limited restriction of the Australian parallel import restrictions do nothing to limit the constant and vigorous competition that entails. They can only appear as significant by adopting a theoretically shallow definition of competition and applying it without regard to the wider market context.

Parallel Importation Restrictions: benefits to consumers

It is in the long-term interests of Australian consumers to have a large variety of titles available and to have the means to search and discover their preferences from among that diversity. Existing parallel importation restrictions are at or close to the minimum amount of protection to maintain a system of Australian property rights. Domestic suppliers add a level of depth and differentiation to the marketplace. Without the system of Australian rights, it is highly likely that publishers would reduce the size of print runs for some titles and avoid completely the risk of others. As a result, it is likely that there would be downward pressure on the revenues of Australian printers and that fewer Australian writers and a narrower range of Australian titles would be presented to the Australian reading public.

The Panel quotes the submission of the ACCC that 'rights holders are entitled to legitimately acquire market power by developing a superior product to their rivals, and pursuant to the policy purpose of IP regulation, the temporary market power from an IP right provides the very incentive to invest in the production of new IP. Such innovation is also a key goal of competition law. In this respect, IP and the competition law are for the most part complementary, both being directed towards improving economic welfare'¹⁵. Removing parallel importation restriction would remove the value of holding an Australian intellectual property right that is a part of the foundation for the constant rivalry amongst authors and publishers to develop a superior product.

A rich diversity of titles, including Australian titles is in the long-term interest of Australian consumers and their continued availability depends on the investment by the book industry that is enabled by territorial copyright.

The Panel itself notes that:

'restrictions imposed in connection with the supply or acquisition of goods or services are common and may be pro-competitive or anti-competitive depending on the circumstances. For example, a franchisor may require its franchisees to confine their trading to a particular geographic region. Provided the products supplied by the franchise compete with a wide range of other products, the geographic restriction may increase competition by encouraging franchisees to invest in their designated business area.'¹⁶

It would be inconsistent policy to provide a regulatory framework that allows this structure for franchisors but denies it to authors and their publishers.

The parallel importation rules impose a small restraint on the ability of a few major retailers to exploit free-riding opportunities on a few hit titles, after their success has been identified and after publishers and authors have made their investments and taken the original risks. This is not competition that has any long-term benefit for the range of books available to consumers and there is no guarantee that any benefit captured by these firms will flow to Australian consumers. Any small benefit gained would be more than offset by the compromising effect on the competition between authors and publishers and the investment in the creation of a diverse range of future titles. The better view is that parallel importation restrictions maintain an Australian intellectual property right that, like other property rights, is a condition of the existence of a market, rather than a distorting intervention in it.

Any claims that the interests of Australian consumers are harmed by the parallel importation restrictions should be on the basis of up-to-date and well-informed measurement.

Historically, there were some weaknesses with earlier versions of the parallel importation rules because they did not have any use-it-or-lose-it provisions, that allowed international rights owners to limit the availability of titles to the Australian market. These problems have long been addressed, and it would be a mistake to judge the operation of the existing regulations on the basis of out-dated research.

The Panel's draft report appears to consider parallel importation restrictions to be harmful on the basis only of an a priori theoretical analysis rather than on the basis of any empirical evidence.

¹⁵ *Competition Policy Review Draft Report*, September 2014, p 82

¹⁶ *Competition Policy Review Draft Report*, September 2014, p224

In real terms, the average selling price of a book in Australia is a third less than it was a decade ago. The Speed to Market Initiative and industry-wide improvements to the supply chain mean that the availability issues that beset the country in previous decades before the growth of effective local suppliers are a matter of only historical relevance.

The evidence of steadily improving price and quality demonstrates the presence of a fully competitive book market in Australia. Every title has a large number of potential substitutes; there is ample competition between similar titles to keep prices highly competitive and publishing firms do not enjoy above average rates of profit. Consumers have access to titles from all over the world and shifting patterns of price-points over the last ten years also show that publishers have little control over market prices.

There is uncertainty about the supposed benefits from removing the limited parallel importation restrictions on books. They may accrue mostly to a small number of large retailers and deliver no substantial value to consumers. However that removal would put at risk a number of benefits to the long-term interests of Australian consumers. The Panel notes the importance of 'assigning priorities to reform initiatives so that those with the greatest potential threat to Australians are progressed first'¹⁷. There are grounds for concluding that the most likely outcome of removing the remaining parallel importation restrictions on books would be, over the long term, more costs than benefits for Australian consumers. Even if the Panel reaches different conclusions about either the likely costs or potential benefits, it is clear that any change should be assigned a low priority.

Policy Alternatives: subsidy or tax incentives

The Panel has raised the possibility that the policy objectives currently served by the minor restrictions to parallel importation of books could be met instead by alternative mechanisms such as direct subsidy or tax incentives. Both policy alternatives constitute potentially greater interventions in the market than the current framework of property rights and their relative merits are highly debatable.

The industry operates at present with defined property rights, where those with an interest in the market outcomes make the investment decisions. This is likely to produce better outcomes than a subsidy mechanism involving choices by government officials. Subsidising Australian publishing is unlikely to provide a cost-effective way to support the publishing industry and we refer to the expenses involved in running grant giving bodies and the oversight that such bodies require in order to achieve the transparency necessary for institutions administering public monies. Providing tax incentives similar to the Australian film industry tax offset scheme are also highly expensive to the Australian tax payer while providing a much lower level of transparency.

As a final point, the Australian parallel importation restrictions are a part of an international framework of intellectual property laws and rights trading. Citing the Productivity Commission, on a similar issue, the Panel concludes that 'unilaterally allowing open skies to Australia would severely disadvantage Australian airlines, so long as the bilateral system remains entrenched in the rest of the world'¹⁸. Although there are some differences between jurisdictions in the approach to parallel importation restrictions for books, Australia's approach is consistent with that of other major English language markets. If Australian authors, publishers and consumers are not to be relatively disadvantaged, changes to Australian intellectual property laws should be made in the context of

¹⁷ *Competition Policy Review Draft Report*, September 2014, p 25

¹⁸ *Competition Policy Review Draft Report*, September 2014, p 115

international harmonisation of those regulations and under the auspices of the relevant international organisations.

Australian authors and publishers, including a number of very small publishing companies earn a significant proportion of their revenue from the sale of international rights. In many cases, local companies are likely to be best positioned to evaluate the potential returns of publishing a title in their market. International rights trading provides an economically efficient method for the allocating the risks of these decisions in international or other English-language markets. The sale of rights provides an effective means to maximize the returns from assets created by Australians and to allow Australian authors to reach a wider audience. It also provides an important source of revenue to enable the investment in the creation of Australian titles for the Australian market. If Australia does not provide the same property rights as other English-language markets, any international rights sales will carry the risk of damaging sales through Australian distribution channels. The structure of international rights agreements also makes it likely that any such parallel sales to the Australian market will provide often significantly smaller returns to the Australian authors and their publishers. This is likely to result either in perverse incentives to Australian authors and publishers to avoid international sales or to reduce the Australian print run or to make the initial investment unsustainable.

Removing parallel importation restrictions will remove competitors from the market and in doing so will remove diversity of content and diversity of supply and therefore, remove the fundamentals of competition that have made the Australian publishing industry a significant source of value to Australian consumers.

Case Studies: Empirical Evidence regarding the Removal of Parallel Importation Restrictions

New Zealand

In 1998, the New Zealand *Copyright Act 1994* was amended to allow for the importation and public issuance (whether by sale or otherwise) of any legitimately produced work into New Zealand. Since that time, the impacts of the removal of parallel importation restriction have resulted in:

- The industry has seen a number of large international publishers partly or entirely withdraw from the New Zealand market¹⁹. This in turn has jeopardised the publication of New Zealand authors, the majority of which were published by international publishers with a presence, and investment, in the New Zealand market.²⁰
- In the decade that followed the removal of parallel importation restrictions, the growth in New Zealand titles was less than 1% as compared to the 2.5% growth of Australian titles.²¹
- The mooted success of parallel importation lowering book prices is contested. It is noted in the 2009 Report, *The Impact of Parallel Importing on Publishing in New Zealand* that: “The

¹⁹ Hachette Publishing have exited the New Zealand market. PenguinRandom House have recently announced the close of their distribution facilities in Auckland. In 2013, HarperCollins, after publishing in New Zealand for 125 years (the oldest publisher in New Zealand), closed its distribution centre and scaled back operations, reducing staff by 80%. As a result, HarperCollins now supply stock from Australia which has imposed a higher cost to New Zealand consumers. HarperCollins have also had to reduce local publishing from approximately 45 titles a year to less than 20 in New Zealand.

²⁰ Book Publishers Association of New Zealand Submission to the Productivity Commission Issues Paper, *Copyright Restrictions on the Parallel Importation of Books*, January 2009

²¹ Castalia Strategic Advisors, *The Impact of Parallel Importing on Publishing in New Zealand*, Report for the Australian Publishers Association, April 2009, p i

observed price gap between New Zealand and the US was a key justification for allowing parallel importing in 1998. At the time, NZIER found that a sample of international titles was around 35 percent more expensive in New Zealand than in the US. In 2004, NECG did a similar exercise (with a larger sample), and found that the price gap had fallen to around 20 percent.”²² However, the conclusions drawn were based on current exchange rates rather than medium exchange rate trends which are more significant in the setting of book prices. The report concludes on this point: “We find that for a similar sample of titles in 2009, the price gap between New Zealand and the United States remains somewhere between 10 percent and 29 percent, depending on the exchange rate used. Applying similarly plausible historical exchange rates to NZIER and NECG prices, we find that the historical price gap falls into the same range. In other words, one cannot say with any certainty whether parallel importing has had any impact on domestic prices.”²³ This assertion is also supported by the Publishers Association of New Zealand.

The 2012 study by Deloitte Access Economics for the New Zealand Ministry of Economic Development statement that there has been a \$3.06 drop in overall book prices in the New Zealand²⁴ market lacks contextual analysis and assumes that parallel importation to be the key factor. However, there has been, in that same time, downward pressure on book prices in the Australian market because of international and domestic competition, supposedly despite parallel importation restriction.

Australian Print Industry

Print industries around the world have been through many phases of structural and technological change in the last 40 years. The Australian print industry has built itself, despite massive tectonic shifts in printing since the advent of computers, into a nimble and sophisticated industry. Currently, the print industry is one of the strongest manufacturing industries in Australia.

There is a small pool of printers that specialise in book printing that rely on strong and predictable demand from a strong domestic publishing sector. The APA sought the views of these print businesses in order to ensure the hard empirical evidence of what the removal of parallel importation restriction would mean to this important industry is factored into this debate.

Australian Printer Case Study:

- The book printing business is a highly specialised business requiring heavy investment in technology and staff training.
- The customer base is made up entirely of publishers from the trade publishing / mass market publishing sector.
- “If we don’t print books – there is absolutely nothing else we can print – our equipment is so specialised. If we are not printing books – our staff will not be employed.”²⁵
- Significant change in the risk profile of demand for printing will greatly impact on the viability of the printing business.
- An overall drop of 15% in printing demand could mean such a specialised company would cease to be profitable.

²² Ibid, p ii

²³ Ibid, p ii

²⁴ Deloitte Access Economics *The Costs and Benefits of Preventing Parallel Imports into New Zealand* Report commissioned by the New Zealand Ministry of Economic Development 27 February 2012 p 6

²⁵ Direct quote from printer interviewed for the purposes of this report.

- The flow on effects would be:
 - A drop in demand for paper sourced (for example - local papermaking mill is Tasmania – a major employer in that region.)
 - Drop in demand for domestic custom book cover embellishment plant (for example - in the context of the Adelaide market where such a business is based, this would cost 15 jobs).
 - Drop in demand for sheetfed printing (for example - in the context of the Adelaide market this would constitute a loss of 45 jobs).

In Summary

The removal of parallel importation restriction is likely to lead to:

- Introducing greater uncertainty and significantly higher risk into the supply of books on the basis of unpredictable and fragmented demand.
- Depleting publishers' revenue from top-selling titles and thereby discouraging investment in Australian publishing, including expenditure on marketing and service support as well as investment in new content and innovation.
- Reducing the revenue of publishers and of Australian authors.
- Reducing demand on the services of the domestic print industry, potentially to below the levels needed to sustain it.
- Greater disincentives to retailers to carry a wide range of stock, including risks for Australian publishers to continue providing stock on sale-or-return basis, with a consequent reduction in diversity.

Other recommendations

The Panel asked specifically for us to identify recommendations we that supported. As noted above, we endorse the overall policy aims of the review and the objectives the Panel has identified for competition policy.

We note in particular the Panel's draft recommendation for further review of competitive neutrality policies, and endorse the Panel's finding that competitive neutrality policies benefit consumers in markets where both governments and other providers deliver services. The development and publication of educational materials is one such area and we welcome the proposal for continued scrutiny of this policy and for strengthened accountability and transparency of government businesses.

We welcome the Panel's conclusion²⁶ that changes in technology have provided some companies with the capacity to restrict consumer choice and access and that the capacity for dominant players in one market to leverage market power into another market such as media content, including book publishing, is an issue in need of constant monitoring.

²⁶ *Competition Policy Review Draft Report*, September 2014, p 107

CONCLUSION

Competition is a market mechanism that can deliver resource efficiencies, lower prices and consumer choice but it operates within a context and is not the only way that benefits are created for consumers. Rules, regulation and policy have long had an important role in creating the conditions and the environment in which the invisible hand of competition can shape desirable results. In the context of the publishing industry in Australia, as described above, the remaining restrictions on the parallel importation of books impose a small limit on the trade of a few retailers, in order to foster competition in the most important 'field of rivalry' between publishers and so work to the long term benefit of Australian consumers.

The Australian book industry is in a period of substantial change. The existing arrangements have provided a framework within which Australian consumers have access to a highly competitive market for books with a great diversity of titles at the same time as enjoying the benefit of a local industry and the work of Australian authors. Unnecessary change would invite further disruption and increase the risk of eroding the benefits that Australian consumers have enjoyed and valued.

Finally, we add to this perspective that the important competition in the publishing industry is the competition between authors and publishers that is supported by the framework of intellectual property laws and that has supported the growth in Australia of a vibrant culture of letters – a culture that has produced a Nobel Laureate²⁷ and several Man Booker Prize winners.²⁸

²⁷ Patrick White was awarded the Nobel Prize in Literature in 1973

²⁸ Thomas Keneally (1982), Peter Carey (1988, 2001), DBC Pierre (2003), Richard Flanagan (2014)