

Queensland Writers Centre

Submission to Competition Policy Review: Copyright Restrictions on the Parallel Importation of Books

November 2014

Overview

Queensland Writers Centre (QWC) supports the retention of current copyright restrictions on the parallel importation of books into Australia. This submission examines the issues relevant to Australian authors and QWC members in relation to the Competition Policy Review Draft Paper, drawing on QWC's submission to the 2009 Productivity Commission review of the restriction on the parallel importation of books.

Introduction

1. QWC asserts that parallel import restrictions are vital to the public interest.
2. QWC asserts the objectives of the restrictions can only be achieved by retaining current parallel import restrictions.
3. QWC identifies four factors to inform preparation for transition to any reform of copyright restrictions on parallel importation, including industry-led reform.

1. Copyright restrictions on the parallel importation of books into Australia are vital to public interest across four broad categories:

i. AUTHORS: The economic impact on Australian authors of removing current restrictions would be calamitous.

It is QWC's view that authors would be economically disadvantaged by the removal of parallel importation restrictions.

Of foremost concern is that foreign editions of Australian authors' books often return smaller or even no royalties to the authors. Overseas contracts for Australian authors are generally structured so that "export" royalties are at half to a third of the rate the author would expect to receive from an Australian sale via an Australian publisher.

Further, removal of parallel importation restrictions would force local publishers to improve their terms of trade with booksellers in order to compete, leading directly to a reduction in the authors' royalties.

Publishing is already a low margin enterprise. It is unlikely authors' advances will increase at the front end of the supply chain to compensate for reduced royalties at the back end. In fact, authors would see an erosion of their incomes from publishers over time.

To put this in context, an 'average' book advance for a first novel in Australia ranges from \$2000 - \$5000, with royalties of 10% of RRP once sales of the book have earned back the value of the original advance. Publishing contracts commonly include a provision for the author's royalty to be reduced

commensurate with discount offered to retailers. Any reduction in either RRP or advances would be a significant economic disadvantage to authors, whose median income in Australia is just \$11,700 per annum.¹

ii. *PUBLISHERS: Australian literary productivity depends on a healthy publishing industry.*

In theory, authors and their literary agents can demand contractual obligations from their publishers including the advance, royalty and circumstances in which the book may be distributed and sold. Publishers can do the same with distributors and foreign publishers.

The reality, however, is that all but a tiny number of blockbuster authors lack the market power to negotiate more favourable terms. Market power does not always rest with publishers either. Large booksellers with considerable market share are already able to demand very high concessions and discounts from publishers, such as internet retailer Amazon, or in Australia, the large discount retailers such as Kmart and Big W.

If Australian publishers have to drastically cut their production costs in order to preserve profit margins, they will have less incentive to face the risk and investment required to publish new authors who are untested in the marketplace. Instead they will have an incentive to only publish an increasingly narrow range of blockbuster titles. Over time Australian writers will face higher and higher barriers to entry to the marketplace via trade publishers. The historical experience of New Zealand's book industry after parallel importation was allowed in the 1990s supports this.² After decades of struggling, the last three years have seen the almost wholesale closure of international publishers' New Zealand operations.

While technological advances mean authors can now affordably market their work by self-publishing, on the whole they lack the resources to market and distribute self-published titles for any kind of positive economic return, or even the recovery of costs.

iii. *BOOKSELLERS: A diverse ecology of booksellers supports the creation and sale of Australian literature.*

Removal of parallel importation restrictions would also increase large and/or internet-based retailers' leverage in the market over independent booksellers. Discount retailers commonly employ a loss-leader strategy on books in order to sell other high-margin goods. Removing import restrictions creates an added incentive for these retailers to distribute cheaper foreign editions and remaindered books. These are books which deliver lower, or even no, royalties to Australian authors, and are sold at a price which independent booksellers find impossible to compete against.

It's important to consider various impacts on different categories of booksellers, and not treat all book retailers in the market as the same. The Australian bookselling industry has one of the highest penetrations of independent ownership in the English-speaking world. Approximately 32%³ of Australian booksellers are independents, and are small, low-margin businesses. While removal of

¹ Throsby, D. and Hollister, V. (2003). *Don't Give Up Your Day Job*, Australia Council for the Arts, Sydney.

² New Zealand Government (2004). *New Zealand Book Publishing: Industry Development Issues*, <http://www.nzte.govt.nz/section/13673/9618.aspx>

³ Neilsen Bookscan

parallel importation restrictions would likely benefit some booksellers, especially large national retail chains and discount department stores, they would have questionable benefit (and possibly significant detriment) for local high-street indie booksellers who actively nurture and invest in a vibrant culture of Australian reading and writing.

iv. READERS: The current restrictions serve the interests of Australian readers, across both literacy and literary concerns, particularly in regional and remote areas.

The development of literacy and literature in Australia relies on a healthy and diverse range of Australian titles. It would be easy to assume that the only Australian authors affected by reform of copyright territories and parallel imports are those who are actually published by foreign publishers. This would ignore, however, the broader impact on local publishers' consideration of market risk and their willingness to invest in new Australian literature.

In particular, while we have seen a market shift towards digital reading⁴ and the increase in online bookstores and bookselling by department stores, readers in regional and remote Australia face significant barriers to accessing literature, including geographical isolation, lack of internet service, and restricted choice.

As previously stated, removing import restrictions creates an added incentive for large retailers to distribute cheaper foreign editions and remaindered books. A flood of foreign editions from the United States market, which do not reflect Australian language standards, would result in an erosion of reading and teaching resources for Australian readers.

2. The cultural and economic objectives of the copyright restrictions on the parallel importation of books into Australia are only and best achieved through retention of the current model:

i. Protecting a healthy cultural economy through book pricing:

It is not certain that removing parallel importation restrictions would result in cheaper books. There are several factors that determine the local price of books. In addition to the Recommended Retail Price (RRP), these include:

- Goods and Services Tax (GST)
- Foreign Exchange Rates
- Cost of freight
- Terms of Trade (Importing a book from a foreign distributor may only be possible on a firm sale basis, not sale or return as is the common practice in Australia. Booksellers may account for this additional market risk in their pricing).

⁴ Book Industry Strategy Group *Final Report to Government September 2011*

Foreign-based internet retailers, such as Amazon, already have a market advantage because the Australian government is largely unable to levy GST on Australian book purchases from them, yet does apply GST to Australian booksellers.

Price comparisons with books in overseas markets are problematic. The UK does not apply consumption tax (VAT) to books and in the US sales taxes vary from state to state. Furthermore, different publishing markets have different sizes and formats which affect the cost of production and hence RRP. There is no standard book format with which to compare prices from one geographical market to another.

Even if US or UK book prices are cheaper when formats and taxes are accounted for, the additional costs of GST, currency rates, freight and terms of trade, would likely keep local book prices substantially higher.

Australia already punches above its weight in book sales per capita. Heading into a tighter economic environment and labour market, it is questionable whether people really are going to start buying a lot more books if prices come down by a few dollars a title. Despite this, the impact on authors will be a net reduction in their income from book sales.

ii. Parallel import restrictions are best-practice in the English-speaking market

The United States and the United Kingdom are two of the largest English-language book markets in the world. If Australia were to remove its own restrictions it would be at a trade disadvantage where UK and US publishers could freely export their titles to Australia, yet Australian publishers could not similarly compete in US and UK markets.

3. QWC identifies three factors to inform preparation for transition to any reform of copyright restrictions on parallel importation.

i. Data collection:

The Australian book industry suffers from a lack of economic data, and this includes any historical analysis of the price elasticity of demand. A simple economic model would suggest that lower prices lead to higher sales volume. That's not a limitless effect in the market, however, and forecasted economic conditions are more likely to make demand for books *less elastic* in response to price changes.

ii. WTO negotiation:

It is suggested any changes to Australian copyright law should be made in the appropriate multi-lateral trade forum, such as the World Trade Organization (WTO), where Australia can lobby for a level international playing field.

iii. Taxation reform:

The Australian Government currently collects GST from Australian booksellers but not from overseas-based internet retailers. This immediately adds 10% to the retail price of local books and also creates a market advantage for foreign booksellers. If the Australian Government is serious about making books cheaper for consumers, then exempting books from GST would be a swift and effective method that doesn't penalise authors or local book retailers. Alternatively, QWC would at least

expect the Australian Government to apply the same tax levies to internet retailers to even the playing field for local businesses.

iv. Industry led reforms

The book industry has seen significant change since the last review in retaining the parallel importation laws in the Copyright Act. Significantly in 2013, the Book Industry Collaborative Group recommended the voluntary reduction in the parallel importation restriction from 30 days to 14 days – such recommendation was adopted throughout the book industry. In addition to the existing right for booksellers to supply customers with specific orders of an overseas edition, QWC believes that the industry has reached a fair balance between its ongoing viability, and the rights of booksellers and consumers.

About Queensland Writers Centre

Queensland Writers Centre (QWC) is a non-profit writing organisation with approximately 2,500 members, and a national centre of excellence in digital publishing. QWC's mission is to support the practice and development of Australian writers, to advance their recognition and opportunities nationally and internationally, and to nourish a vibrant culture of writing, reading and creating.