

## The Australian Book Industry: myths and reality by Jackie French

I write primarily for young people. My works of history show how our nation, its cultures and economy have been created. I attempt to shine a light on who we have been, who we are, but most importantly, what we as a nation, an economy and as individuals can become. It is muscle-building for the brain.

If we want adults with the insight to bridge the divisions in our nation, we should give them books. If we want adults who will work out how to mine asteroids, give them books rich in challenge and innovation. And if we wish them to know their country, its problems and deep potential, we must give them Australian books; classic Australian titles kept in print by an Australian book industry, and new titles relevant to our current problems and our society.

These classic titles, and others that are so deeply Australian that they resonate with Australian children, are unlikely to be published overseas. And while many, even most, of my titles have been licensed to publishers in overseas territories, the books that are closest to the heart of my Australian audience are unlikely to ever be licensed overseas. They are ours. They are about hard work, Australian dreams, and how we can be the nation created in those dreams. These books change lives. They also, arguably, have already inspired and will continue to inspire economic value.

Seventy years ago, our wealth came from our manufacturing industries: we made everything from ships and tractors to trains, washing lines, cameras and boots that were then exported across the world.

Fifty years ago, our wealth came from what we grew in the ground.

Ten years ago Australia drew its wealth primarily from what was dug out of the ground.

Today and tomorrow, wealth and jobs will come from ideas: intellectual property.

This is why I find it difficult to understand why copyright must even be defended, and why the Commission wasted time on an issue that is already protected by international treaties and trade agreements. It is indeed productivity that is at issue here. The draft report from the Commission has cost Australian authors and the publishing industry far too much, berating a climate of deep uncertainty. Australian authors need a vibrant publishing industry, secure enough to take risks by continually innovating. And our vibrant publishing industry needs the security of a government that supports it.

Instead, the ill-named 'Productivity' Commission suggests:

- removing copyright after 15-25 years
- moving the onus of proving copyright theft onto the copyright holder
- the repeal of parallel importation restrictions
- a 'fair use' approach to the use of copyrighted material, rather than the existing 'fair dealings' exceptions

Any one of these suggestions on their own would have profound, long-lasting, and detrimental effects on not just our publishing industries, but also all those that are, or will be, built upon intellectual property. Implemented together, they could be devastating.

We know this: if Australians and the Australian economy are to benefit from intellectual property, we, the creators, and the businesses built on those creations, need certainty. We need to know that when we create, or build a business around those creations, our ownership of the intellectual property on which that business is built will have the same legal standing as applies to a factory or a housing development.

Why should intellectual property – ideas and creations – be treated differently from physical fabrications? Would the Commissioners seriously suggest that a factory become public property between fifteen and twenty-five years after it was built? That a house may be owned for only fifteen to twenty-five years? Why should work that takes me years to research and create be stolen from me?

'Theft' *is* the accurate word here. The copyright in the books that I have written at present belongs to me, or to the charities I have assigned copyright to. My work, intellectual, imaginative years of research, and the sheer slog of sitting for days and weeks at the computer is what brought them into the world.

What moral reason can possibly be given for stealing my life's work? What possible economic argument could there be to validate this? New Zealand's quickly vanishing publishing industry is evidence of what happens when parallel importation restrictions - so misunderstood by the Commission – are abandoned. But New Zealand still has its film industry to sustain it. As I am sure submissions from the Australian film and television industry will demonstrate, the Commission's removal of copyright certainty and intellectual property will doom it, as well.

It is difficult to understand why the Commission spent time suggesting that copyright terms should be vastly decreased, when it acknowledged this would be extremely difficult to do so. Is this government seriously going to jeopardize this vast and influential sector of the economy on the unsubstantiated proclamations of ideologues who make claims such as, '... few Australian writers write for financial reasons' or advocate limiting the term of copyright when, under international law, those changes are not legal? While it may be true that few writers write for money (and by the same token, few neurosurgeons probably went into their field primarily to make money) a passion for one's profession does not negate the fact that it is a profession, one that earns the family income.

Three not quite hypothetical scenarios demonstrate the Commission's profound misunderstanding of the need for copyright protection. Each of these scenarios is based on an existing author, but as I haven't asked the permission of the other two to give their details I don't name them here. If you wish, however, those writers in question would be happy to substantiate these scenarios. Both are making their own submissions.

Scenario 1:

An academic author has published five books of international renown over her forty-year career. The last was published eight years ago. Her books summarize decades of research and expertise and bring Australia enormous academic renown.

She earns about \$400 a year from each book. Removing the copyright protection, however, means that her work can be changed by other authors, or presented as their own. Copyright does not merely protect an author's income, but the integrity of their work.

Each book was published by an Australian publishing house, knowing that they would not make a profit, nor even possibly cover costs, but for the prestige and public good of publishing them. If, as has happened in New Zealand and Canada, those publishing houses vanish with the parallel importation restrictions that protect them, the world will either lose work like hers, or, more likely, she would have stayed at Oxford, rather than taking a professorship in Australia. In Oxford, her work, and its integrity, would be protected.

Scenario 2:

An Australian author's work is worth roughly \$20 million to the Australian economy, with at least \$4-\$5 million of that as export income. It grows every year. It took eight years, however, for him to be an overnight success, and in that time he was encouraged by an Australian publishing house prepared to take a bet on an unknown author. That bet paid off. Most don't. But unless we have a stable publishing industry, no publishing house will be prepared to risk publishing an unknown author or in a new genre. Nor would an overseas publishing house have accepted the work as he tried, and they refused. He had been a bestseller in Australia for years before his first major overseas sale.

Even now, his very success makes him vulnerable. With copyright certainty abolished, and the onus placed on the copyright holder to take legal action themselves, if an overseas company prints cheap, substandard copies of his books and does not pay him, he will need to take legal action to stop them. This legal fight could take years to resolve, and cost him dearly. The sheer popularity of his books makes copyright theft attractive, even inevitable. Indeed, it occurs now, but a tactful 'You know those copies are illegal' is enough to prevent their continued sale.

Scenario 3:

My own work. I have contributed roughly \$20 million to the Australian economy, according to a publisher's report. Yet none of my books was an immediate bestseller. The sales of *Diary of a Wombat* doubled for many years: but the first print run was only 3,000. Books about the sex life of cricketers become bestsellers overnight, and then vanish. Books like mine take at least five years to become established, by word of mouth, their sales then continue to increase.

A book that continues to sell for generations is called 'a classic.' It appears that the 'Productivity' Commission does not approve of classics, or believes that those who create them should not be paid for that work.

Like the author in the second scenario, I cannot afford either financially or from a time point of view to be the one who enforces my ownership of my intellectual property. Nor would my first book, *Rain Stones*, nor even my tenth, have been accepted by overseas publishers. I didn't begin to acquire my international reputation until *Hitler's Daughter* was published in 2000.

Copyright matters. It matters for deeply cultural reasons, and these are the reasons most often given: the need to protect an Australian identity, to foster national cohesiveness, to encourage creativity. But it is the economic argument that that is the real clincher.

In my youth, during the 1960s, I saw my contemporaries automatically move overseas after graduation if they wished to be writers, publishers, filmmakers, industrial chemists, medical researchers or computer scientists. Thanks to changes in government policy in the 1970s, it became possible to create those industries in Australia and they have since flourished. Under the Commission's proposed changes, however, the loss of legally enforceable intellectual property will mean that young writers, filmmakers, artists, computer scientists, medical and scientific researchers will, once again, move overseas, taking our future economic prosperity with them.

When industries move overseas, Australia loses the jobs and the taxes paid by the company, the employees, and the suppliers for that company, as well as the flow-on effect from those industries – the skills, the rewards and the cultural significance that those industries foster.

The potential loss is even greater: when industries move overseas, Australians lose the chance to train within those industries, to acquire expertise to build upon those industries and create more.

Nor can the creative industries – 'publishing and patents' – be seen in isolation to the rest of the economy. When a child in China, Texas or Korea is raised on *Diary of a Wombat* and its sequels (books that the Productivity Commission would have me surrender all my rights in to whoever wishes to use or abuse them) they suddenly discover Australia, too. And they have a context in which to see its potential either, in a small way, as future tourists or, in a far larger capacity, as investors.

No trade delegation, no matter how large its budget, can give you the international PR of *Possum Magic* or *The 26-Storey Tree House*. All that and the economy receives millions of export dollars, each year, for each book, with sales growing, not decreasing, every year.

The Commission also asserts that most books are commercially viable for between one and four years, using this as an argument for limiting copyright to between five and twenty-five years. This displays appalling ignorance of how publishing works.

If a book is no longer commercially viable, then no one is particularly interested in its rights. Copies are not held in libraries, nor are they photocopied or bought. The question of copyright becomes irrelevant unless those rights ARE valued. Academic works, especially, have small sales, and thus may seem statistically insignificant, but their content is highly valued by those few who access it and is the product of years or decades of work. Are these years to be thrown away because the sales are not statistically significant?

Other works – including some of my own – may go out of print when a new author is relatively unknown, but become major sellers ten or even thirty years after publication, especially if the film rights have been sold. Films may take ten years from the optioning of rights to come to the screen. The plays based on my books have taken a minimum of eight years to be staged, with international success. But it can take five to ten years for a book of mine to gain a large readership. Yes, some books are overnight successes – but they can often vanish equally as fast. Mine gain a readership more slowly, but that readership grows each year. Why then would I write books when the rights would be taken from me, just as they become most valuable?

The specified statistic of one to four years is vastly oversimplified and gives a most inaccurate view of a complex industry that the Commissioners clearly do not understand. We are a country where one in four jobs are in the creative industries. As a writer, my job is to foster creativity, to give a child the creative muscles and the vision, to work out how to mine asteroids in twenty years' time, as well as to understand how our culture created the society we live in today, with all of its diversity and potential. If we are truly to be an economy based on innovation and creativity, we need this understanding, and its vision. We need Australian books. And Australian books need Australian writers.

The Productivity Commission's draft report is based on what appears to be deeply held economic myths that the Commission refuses to either abandon or substantiate.

**Myth number 1: That books in Australia are more expensive than overseas**

The reality is that on average, books in Australia are no more expensive than overseas. This myth may be based on out-of- date figures. It is certainly true that ten years ago books sold in Australia were generally more expensive than the same books sold in the UK or USA, but initiatives undertaken by the publishing industry since 2009, together with changing market forces (such as the ready access to international editions via online retailers) have corrected this.

**Myth number 2: Books sold in Australia would be cheaper if PIR was abolished**

This ignores the real-life examples of 'free markets' such as New Zealand, where the change resulted in a severe deleterious effect on their publishing industry, as well as a consequent negative flow-on effect on the nation's economy.

Using New Zealand as a model, we see the potential for local publishing to decline, forcing authors to seek publication overseas. The reality is that most of these culturally relevant, but 'native' titles have limited interest in international markets. And many well-known Australian authors, whose sales are primarily Australian-based, would struggle to find publishers overseas. For the lucky few who did, their economic return would be reduced, since overseas royalties are often lower than those offered in Australia.

Furthermore, a comparison between the Australian publishing industry and New Zealand's since the removal of their parallel importation restrictions reveals the opposite of what the Commission is suggesting – in fact, the reality shows that prices in both markets have dropped, but prices in Australia have dropped by more than those in New Zealand.

It is important to also distinguish between recommended retail prices (RRPs) and final sale prices to consumers. In Australia, approximately sixty-five percent of all books are sold by major book and department store chains, most of which negotiate their own cost price with the publishers and consequently compete by offering consumers significant discounts off these RRP's.

**Myth number 3: There would be an economic benefit to abolishing PIR**

How? If books are demonstrably not more expensive in Australia, and Australian titles, especially educational books, might become more expensive (as has happened in Canada) there is no benefit to the consumer. Conversely, there will be considerably less choice of Australian titles if our currently flourishing publishing industry is reduced as it has been in New Zealand and Canada. Australian publishing would be competing with other nations, such as the UK and USA, who have their own form of PIR. Australia needs a level playing field for this two billion dollar per annum industry to survive.

Instead, the abolition of PIRs risks the same outcomes as seen in Canada and New Zealand: the loss of jobs, the loss of skills as those in the industry move overseas for opportunities no longer available locally, and for Australia, a major decline in a two billion dollar per annum industry that has shown itself to be innovative, responsive to new technologies and retailing strategies, and growing strongly despite being one of the few industries of its size not to receive any form of subsidy (unlike forestry, banking, health, mining, car manufacturing ... the list goes on.)

**Myth number four: The Australian publishing industry is too successful, and thus removes skilled workers from industries where they may be more productive.**

This extraordinary claim by the Productivity Commission fails to substantiate exactly how the skilled work force employed in the industry might be better engaged.

Experienced and highly qualified editors are specialised professionals, who could not easily migrate to another industry. Other areas, such as international rights, all require employees with specialist experience in their respective fields.

At a time of rising unemployment, it is also difficult to see how there can be a rational complaint that an industry is too successful and employs too many skilled people. This claim may, however, be seen as evidence of an underlying deep bias against the industry.

So having dealt with these 'myths' I now turn to the reality.

**Reality #1: It is not easy to write a book, nor to have it published**

It is neither easy nor quick to write a book that sells in thirty international markets, for decades, bringing in millions in export income to Australia. Australia punches well above its weight in international bestsellers and international awards. There is rarely an international best seller list that does not have an Australian title on it. But this is because each one of us was initially taken on by an innovative Australian publisher, who nurtured us as writers, helped us to earn enough money as authors within our local industry to allow us write full time, and thereby enabled the thorough research, analysis and synthesis needed for a great book, not just a good one.

Mem Fox once described writing a picture book as writing *War and Peace* in haiku. I challenge anyone who thinks it is easy to try it.

### **Reality #2: Fair Use is unfair and a costly burden on our society**

The Commission advocates a system where the onus is on the copyright holder to take action against breaches of those rights.

Briefly, and bluntly, this has been shown in the USA to be impractical, cumbersome and ineffective, and especially disastrous for smaller companies and individual rights holders who have neither the resources to check for copyright breaches, nor the money, time nor expertise to defend them.

Economically, it is far more productive to let rights holders work on what we excel at. For authors, in particular, where one book may be years or even decades in production, both legal and economic certainty is needed for maximum production.

This Commission offers neither.

### **Final thoughts**

I am an old woman - my title last year was 'Senior' Australian of the year. I assumed, wrongly, that Australia would protect my intellectual property, the work that supports not just myself, but also my family, as well as the charities I have made much of my income over to.

Should I have kept each dollar, invested it in houses, instead of giving it to children in need? Even now, with my livelihood under threat, I cannot do that. This government may tread on morality by stealing from authors or other creators in the name of 'future proofing,' but I prefer my morality intact.

Those who build a house can own it and pass it to their heirs. Those who write a book or create a new antibiotic will be dispossessed. We will in fact be destroying the intellectual basis of our future economy.

This is not just immoral. It is deeply economically short-sighted.

This investigation is indeed about productivity. But the questions should be: why does it appear that the answers have been decided even before the evidence has been weighed? Why is the Commission unable to substantiate its many quite extraordinary claims? Why suggest such a radical, even terrifying, change to Australia's economic future with so little data?

Australians deserve facts, not ideology based on the convenient myth that '... all books, films and technical innovation must be free' for anyone who wishes to use, or abuse them. Australia deserves a 'clever country' future based on our past, present and future intellectual property.

Our property.

Those who urge its theft are deeply misguided.